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Negotiating on un-Holy Land The Road from Israel to Palestine

Randolph "Michael" Nacol II

INTRODUCTION: TENSIONS IN THE MIDDLE EAST *

The Middle East is no stranger to conflict. In particular, the land currently called "Israel"¹ has been through the hands of many dynasties and has long been the center of religious development and identity.² Despite turmoil and failed attempts at achieving peace, there is no excuse for complacency in resolving this intolerable Israeli-Palestinian divide.³ The conflict is arguably the longest, most complicated, deep-seated, and vicious battle in modern history.⁴ This article explores various fundamentals of negotiation and settlement with the hopes of spurring ideas, and furthering an interest in how this great conflict might finally be resolved.

Recognizing most topics and single events mentioned in the history of the Middle East conflict have been the sole focus of entire books, or even volumes of books, their depth of treatment in this article is intentionally shallow. The

* The author would like to thank Syndi and Buddy Lockett for their undying love, support, and confidence. As is the case with all my achievements in life, you, along with the grace of the Lord, have made this work possible. I thank you and love you both. I also extend warm thanks to all my family in the Nacol, Moujaes, and Matar family-line for continually sharing their heritage and hearts with me.

1. Bounded on the east by the Jordan River, on the west by the Mediterranean Sea, on the north by Lebanon and on the south by the Sinai Peninsula. See map at http://www.lib.utexas.edu/maps/middle-east_and_asia/middle-east_ref_2002.jpg.

2. See *A History of Conflict*, BBC ONLINE, available at http://news.bbc.co.uk/1/hi/english/static/in_depth/world/2001/israel_and_palestinians/timeline, for a full, in-depth history of the Middle East. References to this British news source are preferable over American, Israeli, or Palestinian news sources, as the BBC tends to provide a more objective treatment of issues.

3. See UN Press Release SC/7848, Security Council 4810th Meeting (AM), "Israelis, Palestinians Need Courage, Determination to 'Stay the Course' on Middle East Road Map, Security Council Told," Aug. 19, 2003, available at <http://www.un.org/News/Press/docs/2003/sc7848.docweb.doc.htm>. Assistant Secretary-General for Political Affairs, said despite setbacks, both Israelis and Palestinians should be encouraged to "take risks for peace." *Id.*

4. See LAUREL HOLLIDAY, CHILDREN OF ISRAEL, CHILDREN OF PALESTINE: OUR OWN TRUE STORIES (1999). Holliday presents both Israeli and Palestinian perspectives on enduring one of the worlds longest, most dangerous conflicts. See also Allen McDuffee, *For the Record*, No. 75, Palestine Center, Jun. 1, 2001, available at <http://www.palestinecenter.org/cpap/pubs/20010601ftr.html>. McDuffee reports on the International Center in Bethlehem briefing given by Reverend Mitri Raheb, pastor of Christmas Lutheran Church in Bethlehem and General Director of the International Center in Bethlehem, on May 23, 2001, wherein Reverend Rehab states the conflict is the "longest ongoing conflict in modern history." *Id.*

first objective is to obtain a good sense of where we are today regarding the Middle East and the position of the parties without regard to the equities involved. Attention will be paid to past negotiation efforts in the Middle East, noting both failures and successes to discern the types of negotiation tactics that are most likely to succeed. After surveying this background, the principles of negotiation will be explored as well as suggestions on how the parties might pave the road to peace.

THE HISTORY OF THE MIDDLE EAST

The Biblical and Classical Ages

In 1250 B.C., the Holy Land was conquered by the Israelites who settled in the land of Canaan.⁵ During the mid-900s B.C., this land, then ruled by King Solomon, fell prey to the Babylonians, who drove the Jews into exile.⁶ The Jews returned. As part of the spoils of Alexander the Great, he made the land Greek in 333 B.C.⁷ In 165 B.C., the last independent Jewish state of ancient times was established after a revolt in Judea, the southern portion of the kingdom, which thereafter became incorporated into "Palestine"—the Roman province housing the long-forgotten Philistines.⁸

In 30 A.D., Jesus Christ said, "forgive them Father, for they know not what they do," as the Jews crucified Jesus on Calvary.⁹ The Romans quelled another Jewish revolt in 70 A.D., and this time known as the "Diaspora" marked another great Jewish dispersion.¹⁰ The Jews returned. After another unsuccessful Jewish revolt between 118-138 A.D., Jerusalem was destroyed and its people were sold into slavery.¹¹ Some 500 years later, Arab Muslims ended the Byzantine

5. See *supra* note 2. A special thanks to Ali Reza Abootalebi, Associate Professor of Political Science at the University of Wisconsin, Eau Claire and author of *ISLAM AND DEMOCRACY: STATE-SOCIETY RELATIONS IN DEVELOPING COUNTRIES, 1980-1994* (2000). Mr. Abootalebi graciously assisted me in the structuring of this article.

6. See BERNARD LEWIS, *THE MIDDLE EAST 'A BRIEF HISTORY OF THE LAST 2,000 YEARS'* 29 (1995). Lewis gives an insightful description of the pre and post Christian era along with philosophical, political, and economic progression dictated by the military conquests throughout the millennia.

7. See *id.*; see also *supra* note 2.

8. See *supra* note 2 and LEWIS, *supra* note 6, at 31-33.

9. See Luke 23:24; see also *Jesus Christ*, *ENCYCLOPÆDIA BRITANNICA*, retrieved Dec. 14, 2003, from Encyclopædia Britannica Premium Service, available at <http://www.britannica.com/eb/article?eu=109559>.

10. See LEWIS, *supra* note 6, at 31; see also MARK TESSLER, *A HISTORY OF THE ISRAELI-PALESTINIAN CONFLICT* 270 (1994). I found Tessler's book to be the most informative, well-founded, and unbiased book on the conflict. It was of invaluable use to me in preparing this article and should be of equal benefit to anyone wishing to engage in a more in depth study of the conflict.

11. See LEWIS, *supra* note 6, at 31.

rule — succeeding the Roman Empire in the East.¹² In the early 8th Century, the second caliph of Islam, Omar, built a mosque presently known as the al-Aqsa Mosque in Jerusalem.¹³ Aside from the 12th Century, exhibiting a brief rule by the Christian Crusaders, the land remained under Muslim rule until the end of the Ottoman Empire in the 20th Century.¹⁴

DECLINE OF THE OTTOMANS, COLONIAL INTRUSION, AND THE RISE OF ARAB AND JEWISH NATIONALISM

British Support of a Jewish Homeland Following WWI

The McMahon Letter (1915)

Sir Henry McMahon was British High Commissioner in Egypt and Ali Ibn Hussein was the Sherif of Mecca during the First World War.¹⁵ The two communicated in a series of bargaining letters from 1915 to 1916, the most crucial of which stated that Britain was prepared “to recognize and support the independence of the Arabs in all the regions within the [demands of Sherif. . . including Syria, Arabia and Mesopotamia].”¹⁶ The Arabs met this support by offering their own support in Britain’s stance against the Ottoman Empire.¹⁷ This “firm and lasting alliance, the immediate results of which [was] the expulsion of the Turks from the Arab countries and the freeing of the Arab peoples from the Turkish yoke”¹⁸ would soon turn sour as Britain ultimately had its own plans with regards to the lands they promised to the Arabs.¹⁹

The Sykes-Picot Agreement, 1916

The Sykes-Picot agreement was a covert agreement concluded in May 1916, during World War I, between Great Britain and France, with the acquies-

12. *Id.* at 35-36; *see also supra* notes 2 and 3.

13. *See* TESSLER, *supra* note 10, at 235.

14. *See* LEWIS, *supra* note 6, at 107, 342; *see also supra* note 2.

15. *History of Palestine*, ENCYCLOPÆDIA BRITANNICA, retrieved Dec. 12, 2003, from Encyclopedia Britannica Premium Service, available at <http://www.britannica.com/eb/article?eu=115038>.

16. HOWARD M. SACHAR, *HISTORY OF ISRAEL FROM THE RISE OF ZIONISM TO OUR TIME* 92 (2d ed. 1996).

17. *See supra* note 15.

18. TESSLER, *supra* note 10, at 222.

19. *See infra* notes 24-27 and accompanying text.

cence of Russia, again for the dismemberment of the Ottoman Empire.²⁰ The agreement led to the division of Turkish-held Syria, Iraq, Lebanon, and Palestine into various French and British-administered regions.²¹ A major event was Britain's insistence that Palestine be excluded from this negotiation, serving as a great disappointment to the Arabs because they believed they were on the brink of self-determination after being freed from Turkish tyranny.²² British troops soon replaced the Turks in occupying Jerusalem.²³

The Balfour Declaration, November 2, 1917

In 1917, British foreign secretary Lord Balfour sent a letter, recognizing for the first time that Britain was sympathetic to a growing movement, Zionism, which called for a Jewish homeland in Palestine.²⁴ The letter said that His Majesty's Government viewed "with favor the establishment in Palestine of a national home for the Jewish people . . . it being clearly understood that nothing shall be done which may prejudice the civil and religious rights of existing non-Jewish communities in Palestine."²⁵ It became known as the Balfour Declaration and is viewed in history as pivotal in the establishment of the state of Israel 31 years later.²⁶

This was the first clear public showing that the British government sided with the Zionists and was committed to assisting the Jews acquire Palestine as their homeland.²⁷ This Declaration came as a great shock to the Arabs, who protested against the Balfour Declaration and demanded withdrawal of the statements by the British.²⁸ Meanwhile, the Jews made themselves busy in buy-

20. Sykes-Picot Agreement, May 1916, available at <http://www.yale.edu/lawweb/Avalon/mideast/sykes.htm>; see also TESSLER, *supra* note 10 at 147-48.

21. See *supra* note 15. In April 1920, at a peace conference held in San Remo, Italy, the Allies mandated the northern portion including Syria and Lebanon to France, and the southern portion, Palestine, to Great Britain. *Id.*

22. See TESSLER, *supra* note 10, at 147-58.

23. DAN COHN-SHERBOK & DAWOUD EL-ALAMI, A BEGINNER'S GUIDE—THE PALESTINIAN-ISRAELI CONFLICT 102-03 (2002).

24. *Id.* at 103; see also LEWIS, *supra* note 6, at 348.

25. See COHN-SHERBOK & EL-ALAMI, *supra* note 23, at 103; see also NOAM CHOMSKY, THE FATEFUL TRIANGLE 90 (1999).

26. See COHN-SHERBOK & EL-ALAMI, *supra* note 23, at 104.

27. *Id.*; see also EDWARD W. SAID, THE QUESTION OF PALESTINE 13 (1992). As Said describes:

Balfour's statements in the declaration take for granted the higher right of a colonial power to dispose of a territory as it saw fit. As Balfour himself averred, this was especially true when dealing with such a significant territory as Palestine and with such a momentous idea as the Zionist idea, which saw itself as doing no less than reclaiming a territory promised originally by God to the Jewish people, at the same time as it foresaw an end to the Jewish problem. *Id.* at 16.

28. See COHN-SHERBOK & EL-ALAMI, *supra* note 23, at 104; see also TESSLER, *supra* note 10 at 148-50.

ing land, promoting agriculture, building schools and developing community organizations.²⁹

In an effort to regain cooperation of the Arab populace, the British proposed the establishment of an Arab Agency, modeled after the existing Jewish Agency, to be in charge of the administration of social affairs for the non-Jewish population. This Arab Agency would be available for consultation with regard to immigration to the extent that it would be detrimental to the non-Jewish population.³⁰ The Jewish and Arab Agency differed in that the Arab Agency only represented the interest of the indigenous Arab population, whereas the Jewish Agency represented the ambitions of the worldwide Jewish community in Palestine.³¹ The Arabs rejected the formation of such an agency.³²

American Rejection of Peace Treaty of Versailles, June 28, 1919

The Versailles Conference was principally aimed at the dismemberment of what was left of the Ottoman and Austro-Hungarian Empires as well as measures against Germany.³³ The United States Senate rejected the Treaty of Versailles, membership in the League of Nations, and refused to accept a Mandate to govern Armenia.³⁴ Instead of joining these coalitions, the Department of State began the process of legally asserting American rights in the occupied Ottoman territories.³⁵

The King-Crane Report, August 28, 1919

The United States made its stand on the conflict when President Woodrow Wilson made a proposal to the Supreme Council of the League of Nations on

29. See COHN-SHERBOK & EL-ALAMI, *supra* note 23, at 104.

30. *Id.*

31. *Id.*

32. *Id.* at 113-14.

33. See *International Relations*, ENCYCLOPÆDIA BRITANNICA, retrieved Dec. 12, 2003, from Encyclopædia Britannica Premium Service, available at <http://www.britannica.com/eb/article?eu=108373>.

34. See DAVID FROMKIN, *A PEACE TO END ALL PEACE: THE FALL OF THE OTTOMAN EMPIRE AND THE CREATION OF THE MODERN MIDDLE EAST* 533 (2001).

35. *Id.* Fromkin explains how the most conspicuous interest asserted by the United States was that of American oil companies. *Id.* at 533-34. In September of 1919, Fromkin writes, a geologist from an American company wrote his wife telling her "I am going to the biggest remaining oil possibilities in the world . . . thee pie is so very big" that whatever had to be done should be done to "gain us the rights which properly belong to American Citizens." *Id.* See also LORD KINROSS, *ATATURK: A BIOGRAPHY OF MUSTAFA KEMAL, FATHER OF MODERN TURKEY* 226 (1965).

March 20, 1919.³⁶ The American appointed King-Crane Commission spent three weeks in Palestine and Syria soliciting petitions from local inhabitants.³⁷ The Commission concluded that Syria should be put under either American or British mandate with a monarchy ruled by Emir Faisal.³⁸ The Commission warned that displacing the indigenous Palestinian population by land purchase and military mobilization in order to enforce a mass Jewish immigration, a scheme against the will of the overwhelming majority of the existing population, would be a gross violation of the principles of self-determination.³⁹ However, President Wilson had already expressed full support of the Balfour Declaration, an idea consistent with the principles of Zionism.⁴⁰ Civil unrest arose in Jerusalem in the spring of 1920 as factions demonstrated against both the British and Jewish immigration.⁴¹ The response from Churchill would come in the form of the "Churchill White Paper."⁴²

The Churchill White Paper (1922)

This document stated in pertinent part:

[T]he terms of the Declaration referred to do not contemplate that Palestine as a whole should be converted into a Jewish National Home, but that such a Home should be founded in *Palestine*. In this connection it has been observed with satisfaction that at a meeting of the Zionist Congress, the supreme governing body of the Zionist Organization, held at Carlsbad in September, 1921, a resolution was passed expressing as the official statement of Zionist aims "the

36. See *Recommendations of the King-Crane Commission on Syria and Palestine*, Aug. 28, 1919, available at <http://www.palestinecenter.org/cpap/documents/recommendations.html>; see also *King-Crane Commission*, ENCYCLOPÆDIA BRITANNICA, retrieved Dec. 12, 2003, from Encyclopædia Britannica Premium Service, available at <http://www.britannica.com/eb/article?eu=46578>. The commission discovered the vast majority of Arabs favored an independent Syria, and that of the 1,875 petitions collected, 72 percent were openly opposed to the Zionist plan for a Jewish national home in Palestine. *Id.* The commission advised serious modification of the Zionist immigration policy in Palestine in light of such findings. *Id.*

37. *Id.*

38. I suggest this is less of an isolated event and more of a systematic pattern resulting from *real-politik* policy instituted by powerful nations. This proposition is reinforced by the recent activity in Iraq, arguably now under British and U.S. mandate, and President Bush's recent ousting of Liberian President Charles Taylor, precipitated by U.S. military intervention. See *Timeline: Iraq*, BBC ONLINE, available at http://news.bbc.co.uk/2/hi/middle_east/country_profiles/737483.stm, for U.S. and Britain efforts in dismantling Saddam Hussein's regime. See *Timeline: Liberia*, BBC ONLINE, available at http://news.bbc.co.uk/2/hi/africa/country_profiles/1043567.stm, for the U.S.' role in ousting Charles Taylor.

39. See *supra* note 36.

40. ESCO Foundation, *Palestine*, Vol. 1, 213-22; for details on the King-Crane findings, see LAQUEUR AND RUBIN, *THE ISRAEL-ARAB READER* 21-27 (1984); available at <http://www.mideastweb.org/1922wp.htm>.

41. See TESSLER, *supra* note 10, at 238.

42. See *The Churchill White Paper*, Jun. 3, 1922, Yale University Avalon Project, available at <http://www.yale.edu/lawweb/avalon/avalon.htm>. It includes a wealth of documents in law, history, and diplomacy.

determination of the Jewish people to live with the Arab people on terms of unity and mutual respect, and together with them to make the common home into a flourishing community, the upbuilding of which may assure to each of its peoples an undisturbed national development.⁴³

This document also established an open immigration policy.⁴⁴ More importantly, a commission was established to facilitate Jewish immigration, while ensuring it would not be to the detriment of the local population.⁴⁵

The Mandate for Palestine, July 24, 1922

Negotiations between Great Britain and the United States with regard to the Palestine mandate were successfully concluded in May 1922, and approved by the Council of the League of Nations in July 1922.⁴⁶ The Mandate recognized the "historical connection of the Jewish people with Palestine" and the "grounds for reconstituting their *national home* in that country."⁴⁷ The mandates for Palestine and Syria came into force simultaneously on September 29, 1922.⁴⁸

Until 1929, there were no major obstacles hindering Jewish development, nor were there any measures in place that stood as a bar to Jewish immigration into Palestine.⁴⁹ The Jews and Arabs were even cooperative in such things as the Dead Sea concession, a mining agreement for the extraction of minerals and salts from the Dead Sea that was headed by a strong British board of directors and driven by a good working relationship between both Jews and Palestinian Arabs.⁵⁰ In 1929, however, a civil unrest took place known as the "Wailing Wall Crisis."⁵¹ Jews revere one of the last vestiges of the Temple of Solomon, the Wailing Wall, which forms part of the large platform on which the two Islamic monuments, Aqsa Mosque and Dome of the Rock stand.⁵² The Dome of the Rock is the spot considered by Muslims to be the location of the gate

43. *Id.*

44. *Id.*

45. *Id.*

46. See *Palestine*, ENCYCLOPÆDIA BRITANNICA, retrieved Dec. 15, 2003, from Encyclopædia Britannica Premium Service, available at <http://www.britannica.com/eb/article?eu=115038>.

47. Palestine Mandate, available at <http://www.yale.edu/lawweb/avalon/mideast/palmanda.htm>.

48. See TESSLER, *supra* note 10, at 222.

49. *Id.*

50. See *Report by His Majesty's Government to the Council of the League of Nations on the Administration of Palestine and Trans-Jordan for the Year 1929*, available at <http://domino.un.org/unispal.nsf/0/-38bed104db074b49052565e70054eb22?OpenDocument>; see also TESSLER, *supra* note 10, at 181-83 (describing other instances of Jewish and Arab cooperation.).

51. See COHN-SHERBOK & EL-ALAMI, *supra* note 23, at chapter 8.

52. See TESSLER, *supra* note 10, at 316-17.

through which Mohammed was carried to heaven by the mythical creature al-Buraq.⁵³ This area, therefore, has great importance to both Muslims and Jews.⁵⁴ In 1928, immediately prior to Yom Kippur, a segregation screen for women was installed on the pavement beside the wall, bringing about Palestinian unrest; this upset the Jews who saw the unrest as discrediting their holy day.⁵⁵ These tensions resulted in violence in August of 1929,⁵⁶ whereby the British responded in sending more troops to the region.⁵⁷

From this point on, the strength of the Palestinians' nationalist movement began to diminish, as evidenced by the rejection of Palestinian-proposed immigration restrictions by the British Prime Minister.⁵⁸ The Israeli-Palestinian crisis next evidenced itself in 1936 with repeated Arab attacks followed by calculated Jewish retaliations.⁵⁹ The noted importance of this incident was that "it can be seen as a general pattern that the only really effective action in the history of the Palestinian struggle up to the present day has been spontaneous popular uprising."⁶⁰ After this uprising, the Palestinians publicly declared their primary enemy would be the British, who were responsible for the mass Zionist immigration, rather than the Zionists themselves, and that the struggle should not end until Palestinian demands were satisfied.⁶¹

The Jews took an official position that the interests of the Jews and Arabs were inherently reconcilable; this was in line with the Churchill White Paper and Balfour Declaration that the welfare, language, religion and culture of the Arab population should not be prejudiced, and that the Jews were resolved to live in harmony with the Arabs.⁶² The Palestinians denounced the Jewish right to their homeland, objecting to the loss of land, increased cost of living, and loss of jobs

53. See *id.* at 77-82, exploring Islam, and political and military skill enabling Muhammad to build his empire and write the now "un-translatable" word of God in the Quran; see also ABRAM LEON SAACHAR, A HISTORY OF THE JEWS 129 (1964); Quran 17:1, for Muhammad's overnight journey from the "Sacred Mosque to the Farthest Mosque."

54. See COHN-SHERBOK & EL-ALAMI, *supra* note 23, at 104.

55. *Id.*

56. *Id.*

57. See ESCO FOUNDATION FOR PALESTINE, PALESTINE: A STUDY OF JEWISH, ARAB AND BRITISH POLICIES 294-95, VOL. I (1947), for a detailed account of the Shaw Commission findings and British troop involvement.

58. *Id.*

59. This is the cycle all too familiar today, especially during 2002-2003 as Sharon, operating under Bush's "terror agenda" musters up increased courage to increase the strength of "retaliations" to Palestinian's main weapon: the suicide bomber—aka "the martyr." See *Timeline: Mid-East Bloodshed*, BBC ONLINE, Sep. 10, 2003, available at http://news.bbc.co.uk/2/hi/middle_east/3098090.stm.

60. See COHN-SHERBOK & EL-ALAMI, *supra* note 23, at 119.

61. *Id.*

62. *Id.* at 121.

and discrimination against Arabs in employment — in effect calling for withdrawal of the Jewish National Home policy.⁶³

A British Royal Commission determined the unrest could be attributed to two key factors: the desire for Arab national independence, and fear of the establishment of a Jewish National Home.⁶⁴ As we explore the negotiation process, these two factors remain paramount in considering the possibility of settlement between the parties.⁶⁵ In response to Arab complaints, the Commission asserted that the statistical measures evidenced that the condition of the Arab population was better under the British administration than it had ever been under Ottoman rule.⁶⁶ However, as we evaluate the negotiating process, we must now refute such a position since under current international law, such responses to injustices no longer suffice to explain away a people's suffering.⁶⁷

The White Paper (1939)

The British White Paper of 1939 was issued to satisfy mounting Arab pressure against further Jewish immigration and colonization of Palestine.⁶⁸ The first attempt of Britain to control Jewish immigration, the Passfield White Paper of 1930, evoked considerable opposition from the Zionist movement and was rescinded in a letter issued to Haim Weizmann.⁶⁹ Increased Jewish immigration soon provoked widespread riots in 1936.⁷⁰

The White Paper of 1939 stated, "His Majesty's Government believes that the framers of the Mandate in which the Balfour Declaration was embodied could not have intended that Palestine should be converted into a Jewish State against the will of the Arab population of the country."⁷¹ Furthermore, it proclaimed "His Majesty's Government therefore now declares unequivocally that

63. *Id.*; see also TESSLER, *supra* note 10, at 133-40, discussing Zionism and Palestinian Arabs.

64. *Id.*

65. See *Country Profile: Israel and Palestinian Autonomous Areas*, BBC ONLINE, available at http://news.bbc.co.uk/2/hi/middle_east/country_profiles/803257.stm. "The division of the former British mandate of Palestine and the creation of the state of Israel in the years after the end of World War II have been at the heart of Middle Eastern conflicts for the past half century." *Id.*

66. *Id.*

67. See *International Human Rights Convention*, available at <http://www.unhchr.ch/udhr/index.htm>.

68. At that time some 80,000 Jews had relocated to Palestine. The British White Paper is available online at <http://www.yale.edu/lawweb/avalon/mideast/brwh1922.htm>.

69. See TESSLER, *supra* note 10, at 222.

70. *Id.*

71. See *supra* note 68.

it is not part of their policy that Palestine should become a Jewish State.”⁷² However, the key portion dealing with immigration stated, “Jewish immigration during the next five years will be at a rate which, if economic absorptive capacity permits, will bring the Jewish population up to approximately one third of the total population of the country.”⁷³ The “Administration of Palestine . . . [was] required to facilitate Jewish immigration under suitable conditions.”⁷⁴ Further portions of the paper include in pertinent part: “[Palestine] should be a State in which the *two peoples* in Palestine, *Arabs and Jews*, share authority in government in such a way that the essential interests of each are shared.”⁷⁵

The Zionist Reaction to the White Paper (1939)

Speaking for the Jews, the League Mandates Commission declared the White Paper to be illegal, stating, “[T]he policy set out in the White Paper is not in accordance with the interpretation which, in agreement with the Mandatory Power and the Council, the Commission has placed upon the Palestine Mandate.”⁷⁶ The British continued to enforce the provisions of the White Paper, nonetheless; however, since the gates of Europe had been closed to the Jews, their efforts had little practical effect.⁷⁷ A group of Arab delegates journeyed to Versailles to vocalize their desires and aspirations, but they were ignored.⁷⁸

UN General Assembly Resolution 181 (Partition Plan) November 29, 1947

Great Britain finally acknowledged publicly in 1947 that it was not within London’s power to impose a settlement in Palestine by turning the matter over to the United Nations, which created an eleven-member Special Committee on Palestine (UNSCOP).⁷⁹ The UNSCOP’s ultimate proposal included the territo-

72. *Id.*

73. *Id.* The Paper continues to explain that “[t]aking into account the expected natural increase of the Arab and Jewish populations, and the number of illegal Jewish immigrants now in the country, this would allow the admission, as from the beginning of April [of 1939], of some 75,000 immigrants over the next five years.” *Id.*

74. *Id.*

75. *Id.* (emphasis added).

76. See *supra* note 36 and accompanying text; see also HAIM WEIZMANN, TRIAL AND ERROR 509 (1949).

77. See WEIZMANN, *supra* note 76, at 509.

78. See COHN-SHERBOK & EL-ALAMI, *supra* note 23, at 103; see also MUSA MAZZAWI, PALESTINE AND THE LAW. GUIDELINES FOR THE RESOLUTION OF THE ARAB ISRAELI CONFLICT 19-24 (1997).

79. See MICHAEL T. BENSON, FROM HARRY S. TRUMAN AND THE FOUNDING OF ISRAEL (Raymond H. Geselbracht ed., 1997); Truman Presidential Museum and Library Online, available at <http://www.trumanlibrary.org/israel/palestin.htm> (“The British government announces that it will terminate its mandate for Palestine” and announces that it will refer the problem of the future of

rial divisions proposed for the Arab and Jewish states “to be composed of three noncontiguous regions.”⁸⁰ The Arabs were to be awarded the western part of Galilee and the Negev was attached to the Zionist state, giving the Jews 56 percent of the country.⁸¹

United Nations General Assembly Resolution 181 called for the partition of the British-ruled Palestine Mandate into a Jewish state and an Arab state.⁸² The UN General Assembly endorsed the partition resolution on November 29, 1947 by a vote of thirty-three to thirteen with ten abstentions, a vote narrowly meeting the two-thirds requirement for passage.⁸³ The Jews in Palestine accepted the resolution, yet the Arabs in Palestine and the Arab states rejected the resolution.⁸⁴

War broke out as the Palestinians raised a guerrilla army to resist implementation of the Resolution.⁸⁵ Three phases of fighting followed⁸⁶ and by the end, the Jewish state had signed armistice agreements with all of its neighbors

Palestine to the United Nations”); *see also* report of UNSCOP — 1947, available at <http://www.-mideastweb.org/unscop1947.htm>.

80. TESSLER, *supra* note 10, at 259.

81. *Id.*

82. Resolution 181, available at <http://www.yale.edu/lawweb/avalon/un/res181.htm>. Most notable in the proposal was “the overall territorial pattern, which allowed each state to intersect and separate the provinces of the other,” a plan “described by one British scholar as two fighting serpents entwined in an inimical embrace.” TESSLER, *supra* note 10, at 259. Furthermore, “the majority proposed that the two states establish by treaty a formal economic union, and then added that the independence of neither state should be recognized until such a treaty had been signed. *Id.* Finally the proposal envisioned an international enclave surrounding Jerusalem and extending as far south as Bethlehem.” *Id.* The Arab opposition to the proposal consisted of a charge that the UN had no right to grant the Zionists any portion of their territory and that the “Western world was seeking to salve its conscience for the atrocities of the war and was paying its own debt to the Jewish people with someone else’s land.” *Id.*

83. TESSLER, *supra* note 10, at 261.

84. *Id.* at 259; *see also* LEWIS, *supra* note 6, at 343-44.

85. TESSLER, *supra* note 10, at 261-65. After the guerrilla army failed, Egypt, Jordan, Iraq, and Syria attacked Israel on May 15, 1948. *Id.* The Jewish Agency announced that it would regard an invasion by Arab armies as releasing Israel from the obligations of the UN resolution. *Id.* For a Palestinian viewpoint, claiming the attacks of May 15 resulted in more than 400 Palestinian towns being destroyed, *see* Palestinian Refugees, *Population of Palestine after May 15, 1948*, available at <http://www.palestinerefugees.org/HTML/popafter.htm>.

86. TESSLER, *supra* note 10, at 264. Each phase of fighting added to the territory under Israeli control. The first phase ended peaceably, and the second phase — referred to as the “Ten Days War” — resulted in Israeli forces seizing territory in the Galilee and the Tel Aviv-Jerusalem corridor that the UN had allocated to the proposed Palestinian state, and an Israeli forfeiture of that land in the Negev so allocated to the Jews. *Id.* During the final phase, Israeli forces expelled Egyptian forces from the Negev, extending its control to the borders of Sinai, a further capture of land originally allocated to the Palestinians in partition resolution. *Id.* at 264.

— Egypt, Lebanon, Jordan, Iraq, and Syria — which now stood as Israel's official boundaries.⁸⁷

Palestine disappears

When the armistices were drawn, the West Bank, originally to be granted to the Palestinians under the UN Partition Resolution, was in the hands of Arabs, not Palestinians.⁸⁸ The land remained in such hands until the West Bank was annexed by Transjordan under the control of King Abdullah, who upon annexing forbid using the word "Palestine" to be used in the official decree.⁸⁹ By insisting that the term "West Bank" rather than "Palestine" be used it was now clear that there would be no separate Palestinian state.⁹⁰ Effectively, the state of Palestine had disappeared off the map.⁹¹ The fact the UN would later pass Resolution 194 in December of 1948, calling for the return of Palestinian refugees, compensation for damaged property, and a commission to direct their social and economic rehabilitation, would be of no consequence as Israel proved to only dig its heels further into the land they now had won.⁹²

According to UN figures, the number of Palestinian refugees reached 750,000 at the beginning of 1949; that figure rose to 940,000 by June of that year.⁹³ "The extent to which Palestinian psychology is marked by the events of this period cannot be overemphasized."⁹⁴ Many refugees suffered a loss of not only their land and home, but were also cut off from their families who lived in states with which Israel remained at war.⁹⁵

"The Declaration of the Establishment of the State of Israel," May 14, 1948

On May 14, 1948, the Declaration of the Establishment of the State of Israel asserted "it is the natural right of the Jewish people to be masters of their own fate, like all other nations, in their own sovereign state."⁹⁶ Its preamble declared:

87. *Id.* at 260.

88. *Id.* at 276.

89. *Id.* at 276. See also Wikipedia Encyclopedia Online, *West Bank*, available at http://www.wikipedia.org/wiki/West_Bank.

90. TESSLER, *supra* note 10, at 276.

91. *Id.* at 278.

92. *Id.* at 279-84.

93. Daoud Kuttab, *A Profile of the Stonethrowers*, 67 J. OF PALESTINE STUDIES 18, 18-20 (1988).

94. TESSLER, *supra* note 10, at 281.

95. *Id.* For all practical purposes Israel remains politically "at war" with nearly every other Middle Eastern country. See *infra* note 234; see also, e.g., *U.S. Blocks Action on Israeli "Wall,"* BBC ONLINE, Oct. 15, 2003, available at http://news.bbc.co.uk/2/hi/middle_east/3192762.stm.

96. TESSLER, *supra* note 10, at 269-71. The Declaration is available at <http://www.mfa.gov.il/>

The Land of Israel was the birthplace of the Jewish people. Here their spiritual, religious and national identity was formed. Here they achieved independence and created a culture of national and universal significance. Here they wrote and gave the Bible to the world . . . WE DO HEREBY PROCLAIM the establishment of the Jewish State in Palestine to be called Medinah Yisrael [meaning the State of Israel].⁹⁷

Having achieved independence, this is the test the Jewish people had historically longed for: to demonstrate that Jewish values could give prosperity and meaning to a modern nation-state.⁹⁸

The Law of Return (1950)

In 1950, the Israeli parliament passed the Law of Return, giving further substance to the Jewish character of the state.⁹⁹ The Law of Return declared that every Jew has the right to immigrate to Israel and become a citizen, and citizenship could only be withheld in the case of "acts against the Jewish nation" or on a threat to public health or state security.¹⁰⁰ The Law further specified, "every Jew who migrated to the country before this law goes into effect, and every Jew who was born in the country either before or after the law is effective, enjoys the same status as any person who migrated on the basis of this law."¹⁰¹ This confirmed that Israel was to be the state of the entire worldwide Jewish people.¹⁰² The United Nations' preferred treatment of Jerusalem as a *corpus separatum* supported this Jewish effort.¹⁰³

Arab Reaction to Israeli Victory

In the words of Gamal Abdul Nasser who became president of Egypt in 1954, the Israeli victory was a "smear on the entire Arab nation" and that "the shame brought on by the Battle of 1948" could never be forgotten.¹⁰⁴ Thereaf-

[mfa/-go.asp?MFAH00hb0](http://www.mfa.gov.il/mfa/go.asp?MFAH00hb0).

97. TESSLER, *supra* note 10, at 269-71; *see also* SACHAR, *supra* note 16, at 310-11.

98. TESSLER, *supra* note 10, at 269-71.

99. *Id.*

100. The Law of Return, *available at* <http://www.mfa.gov.il/mfa/go.asp?MFA000kp0>; *see also* SACHAR, *supra* note 16, at 383-84.

101. *Id.*

102. HELENA COBBAN, *THE PALESTINE LIBERATION ORGANIZATION: PEOPLE, POWER AND POLITICS* 269 (1984).

103. *See* G.A. Res. 303 U.N.GAOR, 4th Sess., U.N. Doc. A/Res/303 (1949), *available at* <http://www.mideastweb.org/ga303.htm>.

104. TESSLER, *supra* note 10, at 284. Nasser spoke these words to a contingent of Egyptian soldiers in 1963. *Id.*

ter, the two main issues dominating the thinking about the Arab-Israeli conflict were the legitimacy of the State of Israel and fate of the Palestinian refugees.¹⁰⁵ One common notion espoused by the Arabs was that the creation of Israel was illegal and that the State itself was therefore illegitimate.¹⁰⁶ Arabs, both then and now, absolutely rejected any attempt to destroy the Arab character of Palestine.¹⁰⁷ Contrasting that sentiment with the words of Abba Eban, the Israeli foreign minister at the time, demonstrates the deep divide in the parties' perspectives:

Palestine, the Arabs claim, is theirs by right of prior possession. It is an argument which many decent people rightly concerned with the humanitarian aspects of the Palestine refugees accept as gospel. It happens to be false, or, at best, only partly true There is no greater falsehood in history than that the Arabs are the sole, legitimate heirs to the lands of an Israel that once was Palestine and before that was Canaan.¹⁰⁸

The Jews, on the other hand, derived their rights from Biblical times when God told Abraham, patriarch of the ancient Hebrews, that his descendants would have all the land of Canaan "for an everlasting possession."¹⁰⁹ Because Canaan was the center of Jewish life until the Romans drove the Hebrews into exile, the Jews believed their ancient association with the territory gave them the right to self-determination.¹¹⁰ Some question the legitimacy of the State of Israel under international law principles, suggesting the Balfour Declaration provides no judicial authority to Zionist claims to constitute the Jewish people as a national entity or confer membership in it.¹¹¹ Another argument is that Israel exceeds the limits of international law by attempting to confer nationality on Jews who do not reside within its borders.¹¹² For many, however, arguments surrounding the legitimacy of Israel's creation faded into the more important concerns of achieving a peaceful coexistence between Israel and the Palestinians.¹¹³

105. *Id.*

106. *Id.*

107. SADAM HADAWI, BITTER HARVEST: PALESTINE 1914-1967 (1967). Hadawi is the head of the Institute for Palestine Studies in Beirut. *See also generally* TESSLER, *supra* note 10, at 285.

108. FRANK GERVASI, THE CASE FOR ISRAEL 11 (1967).

109. *Genesis* 17:8; TESSLER, *supra* note 10, at 287.

110. TESSLER, *supra* note 10, at 288.

111. *See* TESSLER, *supra* note 10, at 289; *see also generally* W.T. Mallison, Jr., *The Zionist-Israel Juridical Claims to Constitute the Jewish People's Nationality Entity and to Confer Membership in It: Appraisal in Public International Law*, 32 GEO. WASH. L. REV. 983 (1964). Tessler speaks in Mallison's words and cites a resolution adopted by the League of Nations and Article 389, paragraph 3, of the Statute of the International Court of Justice, which declares Israel's creation to be illegal because "the obligation to withhold recognition from new States falls upon all members of the international community when the creation of these new States is accompanied by manifest irregularities or by acts of violence." *Id.* The report is published by the Institute for Palestine Studies (1968). *See also* THE ARAB-ISRAELI CONFLICT, VOL. I: READINGS (John Norton Moore ed., 1974).

112. *See generally* Mallison, *supra* note 111; TESSLER, *supra* note 10, at 289.

113. *See* TESSLER, *supra* note 10, at 289.

First International Land for Peace Initiative Fails

U.N. Security Council Resolution 242

November 22, 1967: With growing support for the notion that Israel should relinquish the land captured during preceding conflicts, U.S. President Lyndon Johnson proposed to an Emergency Special Session of the General Assembly a return of these lands to the Arabs in exchange for peace.¹¹⁴ After redrafting by UN member states, the United Nations passed UN Security Council Resolution 242 that stated in pertinent part:

Withdrawal of Israel[i] armed forces from territories occupied in the recent conflict . . . [and a] . . . [t]ermination of all claims or states of belligerency and respect for and acknowledgment of the sovereignty, territorial integrity and political independence of every State in the area and their right to live in peace within secure and recognized boundaries free from threats or acts of force.¹¹⁵

Israel publicly endorsed the document and the Arab countries accepted the idea that the exchange of peace for land envisioned in UN Resolution 242 could be carried out simultaneously, rather than in stages that must begin with an Israeli withdrawal.¹¹⁶

However, due to the ambiguity of the Resolution, settlement broke down. Israel claimed that the withdrawal "from territories occupied in the recent conflict" referred to an area upon which no agreement had been met, while the Arabs insisted the clear language ordered Israel's complete withdrawal from all territories in question.¹¹⁷ When yet another impasse arose, the UN Special Representative mediating the conflict explained after a failed trip to enact the measure that "there was no further move that he could usefully make at that stage."¹¹⁸ This initiative, "Land for Peace," first intended as a solution, remains more of a description of the problem than any hope of remedy it ever posed.¹¹⁹

114. *Id.* at 414.

115. UN S.C. Res. 242 U.N. (1967).

116. SAADIA TOUVAL, *THE PEACE BROKERS: MEDIATORS IN ARAB-ISRAELI CONFLICT 1948-1979*, 145 (1982).

117. TESSLER, *supra* note 10, at 422.

118. TOUVAL, *supra* note 116, at 153. Touval describes a United Nations representative's attempts and failure to reach an implementation of the matter. *Id.*

119. TESSLER, *supra* note 10, at 421-22.

The Palestine National Army and Palestinian Guerrilla Groups

Lead by Yasser Arafat, the Palestinian's largest guerrilla combat group, the Fatah, broke from the Palestinian Liberation Organization (hereinafter "PLO") and completed nearly forty commando raids against the Jews by the end of 1965.¹²⁰ As Syria sheltered and supported the Palestinian guerrillas, the overall impact on an increasingly retaliatory Israel became significant.¹²¹ This friction would soon ignite the infamous War of June 1967.¹²²

After Damascus stated publicly that it would now "attack defined targets and bases of aggression" inside the State of Israel, Egypt signed a mutual defense pact with Syria in an effort to try and restrain Syria from contributing to a major Arab-Israeli confrontation.¹²³ Syria's refusal to allow Egyptian military on Syrian soil, however, thwarted the Egyptian initiative and Egypt, arguably controlled by the actions of its "ally" Syria, was effectively drawn into a war with the State of Israel.¹²⁴ The Israeli Defense Forces (hereinafter "IDF") invaded the West Bank on November 13, 1967 after a massive strike, and the UN Security Council issued a formal rebuke of Israel's conduct.¹²⁵ In response, Israel asserted "that so long as the UN failed to stop attacks upon it by the Syrians and the Palestinians, Israel would have no choice but to defend itself in whatever manner appropriate."¹²⁶ This "Six Day War," oddly enough encouraged by the Soviet Union, ultimately ended in a devastating defeat for Egypt and Syria and a glowing victory for Israel, who gained more land, particularly the Egyptian Sinai Peninsula.¹²⁷

120. See COBBAN, *supra* note 102, at 33; see also *infra* notes 151-55 and accompanying text for a discussion of the creation of the PLO.

121. *Id.*; see also FRED J. KHOURI, THE ARAB-ISRAELI DILEMMA 230-31 (3d ed. 1985). Israeli sources claim that Fatah raids began in January 1966, the majority of which were launched from Jordan or Lebanon.

122. *Id.*

123. See COBBAN, *supra* note 102, at 232.

124. TESSLER, *supra* note 10, at 378.

125. *Id.* at 380.

126. *Id.*

127. *Id.* at 397. The Soviet Union intervened by telling Syria that intelligence showed an accumulation of Israeli troops heading for Damascus, and along with the rumor of Israeli leader Rabin's rumored statement that "[w]e will carry out a lightning attack on Syria, occupy Damascus, overthrow the regime there and come back," a war was born. *Id.* 11,500 Egyptian soldiers died, of whom 1,500 were officers. *Id.* Only 66 Israeli soldiers were killed. *Id.* See also *Israeli MFA Online*, available at www.israel-mfa.gov.il/mfa/go.asp?MFAH0dy70; see also ROGER FISHER & WILLIAM URY, GETTING TO YES 42-43 (Bruce Patton ed., 2d ed. 1991).

Al Fatah's Seven Points — Pushing for Palestine (1969)

In January 1969, the Central Committee of Fatah adopted a seven-point declaration proclaiming "the final objective of [Fatah's] struggle is the restoration of the independent, democratic State of Palestine, all of whose citizens will enjoy equal rights regardless of their religion."¹²⁸ The Palestinian authorities pledged, "The Palestinians will keep on struggling, as they have always done, of the liberation of Palestine and for the erection of [this] progressive democratic state."¹²⁹ This ideological shift had its greatest impact in affecting the perception of the international community. Whereas the Palestinians were previously viewed as refugees in need of humanitarian aid, they now could be perceived as a stateless people with a legitimate political agenda.¹³⁰

Retrying "Land for Peace" — Kissinger's International Diplomacy

UN Security Council Resolution 338

In October 1973, Henry Kissinger undertook an international diplomatic initiative while serving as both the U.S. Secretary of State and Richard Nixon's National Security Advisor.¹³¹ This led to the UN Security Council's adopting Resolution 338, calling for a ceasefire and reaffirming the provisions of UN Resolution 242.¹³² Believing Egypt and Syria to be willing negotiators with

128. *The Seven Points*, passed by the Central Committee of Fatah, Jan. 1969; reprinted in LAQUEUR, *THE ISRAEL-ARAB READER: A DOCUMENTARY HISTORY OF THE MIDDLE EAST CONFLICT* 372-73 (Walter and Barry Rubin, eds., 1984). This document, *contra* UN Resolution 242, led to this proposition made by Yasser Arafat to the Jews in Palestine: "The creation of a democratic Palestinian state for all those who wish to live in peace on the land of peace. . . an independent, progressive, democratic State of Palestine, which will guarantee equal rights to all its citizens, regardless of race or religion. "An Interview with 'Abu Ammar' [Yasser Arafat]," *Free Palestine*, Aug. 1969, reprinted. *Id.* See also ALAIN GRESH, *THE PLO: THE STRUGGLE WITHIN, TOWARD AN INDEPENDENT PALESTINIAN STATE* 44 (1985).

129. ISMAIL SHAMMOUT, *PALESTINE: ILLUSTRATED POLITICAL HISTORY* 43 (1972). Shammout recounts the Palestinian vow as set forth in the PLO handbook published in Beirut in 1972. *Id.*

130. TESSLER, *supra* note 10, at 424-34.

131. *Id.* at 480.

132. *Id.* at 480; see also WILLIAM B. QUANDT, *DECADE OF DECISIONS: AMERICAN POLICY TOWARD THE ARAB-ISRAELI CONFLICT* 207(1977). For additional accounts, see generally EDWARD R. F. SHAHAN, *THE ARABS, ISRAELIS, AND KISSINGER: A SECRET HISTORY OF AMERICAN DIPLOMACY IN THE MIDDLE EAST* (1976) and MATTI GOLAN, *SECRET CONVERSATIONS WITH HENRY KISSINGER: STEP-BY-STEP DIPLOMACY IN THE MIDDLE EAST* (1976).

Israel (itself suffering from a dragging, post-war economy), Kissinger attempted to implement the land-for-peace formula on a step-by-step basis.¹³³

After shuttling between Cairo, Jerusalem and Damascus, two disengagement-of- forces agreements occurred: one between Israel and Egypt, and one between Israel and Syria. These two agreements were accomplished in 1974.¹³⁴ The first agreement between Jerusalem and Egypt created three contiguous territorial strips roughly five miles wide in the western Sinai between the Mediterranean and the Gulf of Suez; Egypt controlled the western-most strip, the middle strip acted as a buffer zone controlled by United Nations forces, and Israel agreed to limit the strength of its forces in the eastern-most strip.¹³⁵ Similar agreements were made between Israel and Syria regarding land in the Golan Heights.¹³⁶ A second agreement, made after Kissinger's promise that the U.S. would not recognize the Palestinian liberation movement unless the Palestinian authorities accepted Israel's right to exist under UN Resolution 242, brought another pullback of IDF forces and enabled Cairo to regain more of the Sinai Peninsula.¹³⁷ Thus, the wheels of progress began to slowly roll as Kissinger's incremental approach proved worthwhile.

Yasser Arafat: Address to the UN General Assembly (1974)

A great step for Palestinian recognition came with Yasser Arafat's invitation to address the United Nations in November of 1974.¹³⁸ After being welcomed before the UN assembly in New York, Arafat told the delegates of the Palestinian people's dream to "return from exile and share in the building of a state where Christian, Jew and Muslim live in justice, equality, fraternity and progress."¹³⁹ After the speech the UN passed a resolution giving international recognition to the "inalienable rights" of the Palestinian people, including "the

133. *Id.*; see also *supra* note 16, at 752-80. Note the step-by-step approach was new, and attributable to Kissinger because the prior UN Resolution 242 called for immediate implementation.

134. See SACHAR, *supra* note 16, at 795-96; see also TESSLER, *supra* note 10, at 481.

135. TESSLER, *supra* note 10, at 481.

136. *Id.*

137. See SACHAR, *supra* note 16, at 795-96; see also TESSLER, *supra* note 10, at 481. The IDF, the Israeli Defense Force, is Israel's major military force. See also FISHER AND URY, *supra* note 127, at 41-45.

138. See *Up Close with Yasser Arafat*, BBC ONLINE, Feb. 7, 2002, available at http://news.bbc.co.uk/2/hi/middle_east/1807449.stm. In the speech to the UN, Mr. Arafat waved a leafy branch overhead, saying, "I come bearing an olive branch in one hand." *Id.* Then he pulled out a pistol and said, "And the freedom fighter's gun in the other. Do not let the olive branch fall from my hand." *Id.*

139. *Id.* at 485; UN General Assembly resolutions 3236 (XXIX) and 3237 (XXIX), found in *United Nations Monthly Chronicle II* (December 1974): 36-37, available at <http://domino.un.org/unispalselect.nsf/9a798adbf322aff38525617b006d88d7/025974039acfb171852560de00548bbe!OpenDocument>; see LAQUEUR, *supra* note 128, at 504-18 (containing Arafat's address).

right to self-determination without external interference” and “the right to national independence and sovereignty.”¹⁴⁰

“Camp David Accords,” September 17, 1978

In the Camp David Accords, U.S. President Jimmy Carter urged Egypt’s Sadat and Israel’s Begin to come to peaceful terms over control of the West Bank and Gaza during a twelve-day summit.¹⁴¹ Egyptian President Sadat said, “The Palestinian people and their legitimate rights are no longer denied today by anybody; that is nobody who has the ability of judgment can deny or ignore it. It is an acknowledged fact, perceived in the world community, both in the East and in the West.”¹⁴² With the help of President Carter, Cairo and Jerusalem came to terms as Israel and Egypt agreed to negotiate a peace treaty in good faith and withdraw the IDF, re-establishing Egyptian sovereignty over Sinai.¹⁴³

While claims to Sinai were resolved, the rights of the Palestinians in Gaza and the West Bank, governed by the new “Framework for Peace in the Middle East,” fell into another quagmire.¹⁴⁴ The downfall of this portion of the accord, however, was its ambiguity in dealing with Israeli withdrawal — Israel taking the position that they had only promised to negotiate at Camp David, instead of promising to actually withdraw.¹⁴⁵ Ultimately, the Israelis made good on their promises of negotiating, but not sufficient enough to satisfy the Arab expectations.¹⁴⁶ All that materialized from these negotiations was the initiation of the

140. TESSLER, *supra* note 10, at 485. Tessler refers to UN General Assembly Resolutions 3236 (XXIX) and 3237 (XXIX) respectively. These resolutions are available in United Nations Monthly II, Dec. 1974: 36-37. The UN also granted a resolution granting UN observer status to the PLO. *Id.* This was Arafat’s first victory in establishing the PLO as the legitimate representative authority of the Palestinian people. *Id.*; see also *infra* notes 151-55 and accompanying text, describing the creation of the PLO.

141. TESSLER, *supra* note 10, at 510.

142. *Id.* at 510-11.

143. *Id.* at 512.

144. *Id.* at 514. The Framework was supposed to determine the rights of the Palestinians under the provisions of UN Security Council Resolution 242. It may have been expected by some that reference to an earlier disputed Resolution would only end in further dispute between the parties.

145. *Id.* at 515. Mainly the conflict arose as the Egyptian Arabs expected full withdrawal from the disputed territories in return for recognition of Israel while the Israelis claimed that the Camp David Accords only regarded a promise to participate in negotiations about the future of the West Bank and Gaza. *Id.* In addition, the same arguments still existed which surrounded Resolution 242. *Id.*

146. *Id.* at 516.

“peace process,” which although politically palatable, was nonetheless fruitless for the Palestinian cause.¹⁴⁷

Progress on the “peace process” came to an eventual halt as Israel began active colonization efforts in the West Bank under the Likud’s, a newly empowered political party’s control.¹⁴⁸ Land restraints and restrictions on land acquisitions were removed after 1979, effectively allowing the Israeli government to seize any area in Gaza considered desirable for settlement.¹⁴⁹ This colonization, including active efforts to increase Jewish settlements, also involved the draining of Palestinian water sources.¹⁵⁰ Israel’s Likud colonization, along with a refusal to withdraw from the West Bank and Gaza, showed that the road to peace was still far from paved.

Creation of the PLO

The current Palestinian authority, the PLO, also the same governing authority that dealt with both Kissinger and the UN in 1974, was formed after a meeting in January of 1964 where Arab heads of state formulated a reply to Israel’s plans to remove water from the Sea of Galilee.¹⁵¹ The delegates called for the creation of Palestinian commando units that would carry out sabotage operations against Israeli water installations, and more importantly, “the necessary practical decisions were taken . . . in the field of organizing the Palestinian people and enabling them to play their role in the liberation of their country and their self-determination.”¹⁵² These steps empowered the Palestinian representative to the Arab league, Ahmad Shuqayuri, to come forward with plans for the establishment of the Palestinian Liberation Organization, the official representative of the Palestinian people.¹⁵³

147. See CHOMSKY, *supra* note 25, at 61-63.

148. See TESSLER, *supra* note 10, at 516; see generally MERON BENVENISTI, THE WEST BANK DATA PROJECT: A SURVEY OF ISRAEL’S POLICIES (1984). Benvenisti, former deputy mayor of Jerusalem, explains that all the new settlements built following Likud’s rise to power caused the number of Jewish settlers to increase five times in a three year period. See also MERON BENVENISTI, THE WEST BANK DATA PROJECT: REPORT (1986); WILLIAM W. HARRIS, TAKING ROOT: ISRAELI SETTLEMENT IN THE WEST BANK, THE GOLAN, AND GAZA-SINAI, 1967-1980 (1980); DAVID OTT, PALESTINE IN PERSPECTIVE: POLITICS, HUMAN RIGHTS AND THE WEST BANK (1980).

149. DON PERETZ, THE WEST BANK: HISTORY, POLITICS, SOCIETY AND ECONOMY 66 (1986).

150. ABDALLAH FRANJI, THE PLO AND PALESTINE 117 (1983). Franji claims that not a single Palestinian was allowed to sink a new well for agricultural purposes and only seven new wells for drinking water were permitted. See also PERETZ, *supra* note 149, at 65.

151. See COBBAN, *supra* note 102, at 28-29; see also *supra* notes 137-40 and accompanying text.

152. See COBBAN, *supra* note 102, at 28-29.

153. *Id.*

In 1968, Shuqayri set forth the Declaration of the Creation of the PLO, in the "Palestinian National Charter," underlining the basic goals of the Palestinian people:

Article 2. Palestine, within the boundaries it had during the British Mandate, is an indivisible territorial unit.

* * * *

Article 5. Palestinians are those Arab nationals who, until 1947, had normally resided in Palestine, regardless of whether they have been evicted from it or have stayed there. Anyone born after that date of a Palestinian father, whether inside Palestine or outside it, is also a Palestinian.

* * * *

Article 19. The partition of Palestine in 1947 and the state of establishment of Israel are entirely illegal, regardless of the passage of time, because they were contrary to the will of the Palestinian people and to their natural right in their homeland, and inconsistent with the principles embodied in the Charter of the United Nations, particularly the right to self-determination.¹⁵⁴

A second document approved by the Arab council delegate was the Draft Constitution of the PLO, which established the Palestine National Council as the parliament of the Palestinians, a fifteen-member Executive Committee would be elected by PNC, who in turn would elect the PLO's chairman, as well as the Palestine National Fund whose duty was to raise money.¹⁵⁵

Pushing Nationalism to the People: Learning to Hate

In viewing the development of the conflict, it is essential to not only pinpoint the dividing lines between the parties, but more importantly to also see how the different positions advance within their perspective communities. Reluctant to minimize the merits of the parties' positions, the inescapable fact is that peace will not be realized as long as fundamentally inconsistent positions are aggressively fostered in the minds of those between whom we expect to see peace. How can the Palestinians and Israelis be at peace when the Palestinians are taught that their plight is to be at war? How can these two people not be at

154. Palestinian National Charter, available at <http://www.mfa.gov.il/mfa/go.asp?MFAH00pv0>; see also TESSLER, *supra* note 10, at 374, noting that it has been argued that the creation of the PLO was not to give expression to Palestinian desires for self-determination, but rather to restrain the Palestinian resistance movement in order to prevent existing guerrilla organizations, such as the Fatah, from drawing the Arab states into a war with Israel.

155. WILLIAM QUANDT, ET AL., THE POLITICS OF PALESTINIAN NATIONALISM 69 (1973).

war when Israel continues to colonize a land of another, further strengthening the Palestinian's plight?¹⁵⁶ In the PLO Constitution an "Awakening Committee" was established with a sole purpose to "study ways and means for the upbringing of the new generations both ideologically and spiritually so they may serve their country and work for the liberation of their homeland."¹⁵⁷ After the Camp David Accord, Likud's leadership set Jerusalem to the task of placing physical and political obstacles in the path of those who argued that the Jewish state should seriously explore the opportunity for a comprehensive peace that Camp David appeared to offer.¹⁵⁸

Leaving History Behind

In the intervening years, Arafat has stayed in power, Israel has continued its expansion into Palestinian owned lands through "settlements," the "radical" Islamic Palestinian factions have continued to wreak havoc in the Israel state through "suicide bombings," and the Likud remains in control.¹⁵⁹ And still — there is no peace. "Roadmap" after "Roadmap" has failed, and some are beginning to doubt if there will ever be a solution to the conflict. We must not, however, give up on the hope for peace. While it may not be wrong to fight, it may indeed be man's worst sin if he knows how not to fight. Through exploration of the negotiation process you will see a glimpse of how peace might finally land on a road from Israel to Palestine. By expanding our vision of what could be, and should be, we produce hope and possibilities — either of which, when appropriately guided, can bring down the strongest of walls any nation may build.¹⁶⁰

156. As an illustration, I offer a story told to me by the Honorable Mike Wood. While Judge Wood was in Washington, D.C. for a meeting he began discussing the Israeli-Palestinian conflict and was surprised to find out that a man at the meeting was, in fact, Palestinian. The Palestinian man explained to Judge Wood and others that Israel attempted to take away the land that had been in his family's possession for 1350 years. "As long as that is happening," said the Palestinian man, "there will be no peace in Israel." Special thanks to Judge Mike Wood (Harris County Probate Court #2) and his wife, Judge Sharolyn Wood (127th District Court of Texas), without whom I would not be who, where, or what I am today.

157. See *Draft Constitution of the PLO*, available at <http://www.jmcc.org/politics/plo/ploconstitu.htm>.

158. See TESSLER, *supra* note 10, at 370-96.

159. See *Israel's Likud Grows in Strength*, BBC ONLINE, Feb. 2003, available at http://news.bbc.co.uk/2/hi/middle_east/2734265.stm.

160. See *Germany: History, The Era of Partition*, ENCYCLOPÆDIA BRITANNICA, retrieved Dec. 12, 2003, from Encyclopædia Britannica Premium Service, available at <http://www.britannica.com/eb/article-?eu=109161>, discussing the fall of the Berlin Wall.

NEGOTIATING — DEFINING THE PROCESS

Having explored the factual development behind the conflict, the process of negotiation must now be explored with an eye towards application to the current situation. The remainder of the article focuses on the process of, and obstacles to, negotiation and how its elements may be applied, at least in part, to begin to treat the turmoil in the Middle East. As there is no one solution to the conflict, the following commentary represents solutions, of which there are admittedly countless others, that may be employed to ease not only the tension, but more importantly the needs and pains of the people currently engaged in the conflict.

With its many definitions, negotiation is simply a communication process used to put together deals or resolve disputes. We negotiate daily: with ourselves as we decide how to spend our free time; with our health as we commit to taking those stairs up to the office; and even with our wives and children when we decide to eat Mexican food instead of Italian. In negotiations, our decisions are made in the face of uncertainty. Undoubtedly both Israelis and Palestinians are faced with great uncertainties — the Israelis are faced with the uncertainty that an agreement will stop the incessant bombing that has terrorized the Holy Land since 1999, and the Palestinians are faced with the uncertainty as to the conditions of their people and whether, even under a defined boundary agreement, the Israelis will put a halt to their settlement activity.

PRINCIPLES OF NEGOTIATION

*Every negotiation is a mixed motive exchange.*¹⁶¹

During the summer of 2000, I had the pleasure of visiting Beirut, Lebanon.¹⁶² One bright and very hot day we drove through an Islamic neighborhood where the entire side of one building was painted: two rifles piercing through an Israeli flag with the words “We are Coming!” written in Arabic below. These are not just signs read by grown men who have had their homes destroyed or

161. ROBERT AXELROD, *THE EVOLUTION OF COOPERATION* (1984).

162. For those wanting to get a better understanding of Beirut, see generally THOMAS L. FRIEDMAN, *FROM BEIRUT TO JERUSALEM* (1989). Friedman, a Jewish journalist, does an outstanding job of providing the reader with a vivid glimpse of this city, its people, and its dangers. Beirut, once known as the “Pearl of the Middle East” is now redeveloping under the efforts of Solidere, a company started by Beirut’s Prime Minister, Rafik Hariri. See <http://www.solidere-online.com/solidere.html>, for more information on the redevelopment project and an interactive tour of the city; see also <http://www.downtownbeirut.com>.

their brothers killed. These are signs read by the Palestinian children. It is not a far-fetched proposition that these children are taught to hate. Hatred breeds conflict, the archrival of peace. At the negotiating table, this emotion, along with others, is directed by certain political and economic agendas in a dance often known as the “mixed motive exchange.”¹⁶³

The underlying motives between the Israelis and the Palestinians may be their greatest obstacle to peace. These are the motives which go unspoken at the table, but which nonetheless dictate each party’s moves as they evaluate their gains from settlement. When parties hate one another they may be willing to forgo a settlement in which they stand to gain if, by doing so, they can inflict greater harm upon their enemy. By not settling, the Palestinians continue to afflict the Israeli society by reinforcing the justification for keeping the gateway of terror in tact. Likewise, the Israelis, in the absence of an agreement, may continue their settlement activity — staking claim to more of this disputed land. Therefore, solutions must be introduced, forcing the parties to refocus on their own interests, instead of revenging.

The monetary need of the Palestinians is one problem spurring a motive for their current actions. Recall that Saddam Hussein, the recently captured Iraqi dictator, often made payments to the families of a suicide bomber in the amount of \$25,000 USD.¹⁶⁴ Whenever killing oneself is an incentive to provide for one’s family, the world community must look closely into the conditions of the people being subject to such a dilemma.

Upon inspection, the poverty of the Palestinians is an issue that must be addressed before any resolution can be achieved. Were this monetary interest to be satisfied or advanced through a financial stimulus package to the Palestinians by an outside party, such as the U.S. or UN, the issue could be properly addressed in a civil fashion.¹⁶⁵ By offering a proposal with a greater incentive to remain at peace than the current Palestinian incentive to engage in war, an outside party has the opportunity to intercede in a positive fashion. The Palestinians’ current conditions of poverty¹⁶⁶ afford them less of a motive to negotiate, since they have “nothing to lose.” A plan to bring the Palestinians out of pov-

163. See L. Randolph Lowry, *Negotiation and Settlement Advocacy Notebook*, PEPP. U. INST. FOR DISP. RESOL. 2:1-2:10 (1995).

164. See *Palestinians Get Saddam Funds*, BBC ONLINE, Mar. 13, 2003, available at http://news.bbc.co.uk/2/hi/middle_east/2846365.stm.

165. The Palestinians more recently requested \$1.2 billion in aid from 14 countries, including the sponsors of the peace plan, the EU, the UN, the United States and Russia. See *Palestinians Seeking 1.2 bn Aid*, BBC ONLINE, Dec. 10, 2003, available at http://news.bbc.co.uk/2/hi/middle_east/3305513.stm.

166. See World Bank Online, *Two Years of Intafada, Closures and Palestinian Economic Crisis*, Mar. 5, 2003, available at [http://lnweb18.worldbank.org/mna/mena.nsf/Attachments/WBGsummary-ENG/\\$File/WBGsummary-ENG.pdf](http://lnweb18.worldbank.org/mna/mena.nsf/Attachments/WBGsummary-ENG/$File/WBGsummary-ENG.pdf).

erty, in the name of peace or any other, would certainly inspire them and give them a motive to cooperate.¹⁶⁷

In regards to the Israeli desires to expand their territory through settlement, they must be continually reminded of the undesirable consequence this expansion is producing — terror in their homeland.¹⁶⁸ Refocusing the Israelis on the consequences of their expansion activity would reinforce their motive to enjoy peace. Since this motive to reestablish peace, hopefully, does not ultimately conflict with the Palestinians' desires, the possibility of settlement would therefore increase.¹⁶⁹

Claiming Value in Distributive Bargaining

Distributive bargaining characteristics include a limited-value, or "fixed pie," negotiation with every move having substantive and symbolic value and the result tending to be the midpoint of the first two reasonable offers.¹⁷⁰ The two key opening strategies are opening extreme and soft, or reasonable and firm.¹⁷¹ The most important move in distributive bargaining is the initial move,

167. This can be seen in former Palestinian Prime Minister Abbas' recent trip to the White House, where Abbas smiled as Bush reaffirmed his commitments to a Palestinian state. *See Abbas Wins White House Red Carpet*, BBC ONLINE, Jul. 25, 2003, available at <http://news.bbc.co.uk/1/hi/world/americas/3098265.stm>.

168. *See* Silvan Shalom, *State Budget Proposal for 2003*, available at <http://www.mof.gov.il/bud2003sp.htm>. Shalom, Israeli Vice Premier and Minister of Finance, stated in pertinent part:

The Palestinian war of terrorism ignited by Yasser Arafat and his colleagues two years ago is exacting a high price from us day in and day out, not only in terms of blood, but also in terms of economic resources.

This war, in contrast to other wars we have endured, is no swift war, lasting six days or a month or two months. This war has continued for more than two years.

Since the inception of the wave of terror revenues from taxes have fallen by more than NIS 15 billion. Entire industries, such as tourism, have shrunk and regressed several years. Foreign investors, who came in droves during the euphoric times of talk about a New Middle East, now on stand-by. Entertainment and commercial centers are not like they were in the past. Since the onslaught of the wave of terror, the Israeli economy has lost close to 10% of its gross domestic product, some NIS 40 billion. *Id.* (emphasis added)

169. *See* *Palestinians Want Peace with Israel*, AL JAZEERA.NET, Nov. 12, 2003, available at <http://english.aljazeera.net/NR/exeres/345BED79-31E8-492E-BB5C-A74060D5892A.htm>. Ahmad Quraya, Palestinian Prime Minister Abbas' replacement, said, "Our strategic choice is to stick to peace, to the road map and to agreements signed with Israel." *Id.*

170. *See* Lowry, *supra* note 163, at 2:1-2:10.

171. *Id.* at 2:11-12.

which can be placed in the credible range, the insult range, or the reasonable range.¹⁷² The current Israeli stance is firm: they will only exchange land if there will be no further terrorist attacks.¹⁷³ Given the offer is firm, the question arises as to whether the offer is reasonable.¹⁷⁴ In rejecting past proposals, the Palestinians suggest that, while the offer may not be construed as an insult, it is unreasonable since it does not address the well being of the Palestinian people.¹⁷⁵ To rectify this incongruence, the Israelis, or another party, must put something on the table to address the monetary needs of the Palestinians. The offer would then be more reasonable to the Palestinians, creating the necessary foundation for a settlement.

In the book *The Manager as Negotiator*,¹⁷⁶ David Lax and James K. Sebenius explain the fundamentals of distributive bargaining: a bargain is called distributive when more for one means less for the other and no joint gains beyond simple agreement exist.¹⁷⁷ The authors discuss the importance of shaping perceptions to alternatives, and the fact that each party tries to affect the other's perceptions of the bargaining range and where settlement is possible.¹⁷⁸ The situation in the Middle East seems to be distributive given the fact they are dealing with a fixed pie: the land formerly known as Palestine. However, there are other elements, besides land, which figure into the equation: the benefits of

172. *Id.* at 2:9-2:10.

173. While Sharon agreed to "handover" Ramallah, Tulkarm, Qalqilya and Jericho even after suicide attacks, the likelihood of this occurring is in doubt as Israel continues their raids in the West Bank. See *Israel Agrees Handover of Cities*, BBC ONLINE, Aug. 15, 2003, available at <http://news.bbc.co.uk/2/hi/middle-east/3155361.stm>; *Israel Steps Up West Bank Raids*, BBC ONLINE, Dec. 3, 2003, available at <http://news.bbc.co.uk/2/hi/middle-east/3287537.stm>. "Some Israeli analysts think [Sharon's recent] talk of painful concessions [in the recent negotiations] is a smokescreen meant to buy time to go on building [a barrier wall that will separate Palestinians and Israelis]." See Barbara Plett, *New Peace Plan Challenges Sharon*, BBC ONLINE, Nov. 29, 2003, available at <http://news.bbc.co.uk/2/hi/middle-east/3248434.stm>. As one of Israel's newest solutions, the ongoing constructing of the barrier wall is being internationally questioned. See *Court to Examine Israeli Barrier*, BBC ONLINE, Dec. 8, 2003, available at <http://news.bbc.co.uk/2/hi/middle-east/3301265.stm>. The UN General Assembly recently approved a resolution asking the International Court of Justice to consider the legality of the Israeli tactics for keeping peace. *Id.* Pope John Paul II criticized the wall as a "obstacle on the road leading to peaceful cohabitation." See *Sharon Urges Jews to Go to Israel*, BBC ONLINE, Nov. 17, 2003, available at <http://news.bbc.co.uk/2/hi/middle-east/3275979.stm>.

174. See *supra* notes 171 and 173 and accompanying text.

175. See *Arafat's Ceasefire Call Rejected*, BBC ONLINE, Aug. 28, 2003, available at <http://news.bbc.co.uk/2/hi/middle-east/3187491.stm>. Ahmed Querie, speaker of the Palestinian Legislative Council said, "We also share a belief that prosperity is the key to long-term peace, and want to create more jobs in the Palestinian Authority's region." See *Jordan's Intervention Saves Israeli-Palestinian Talks*, CNN ONLINE, Jul. 22, 1998, available at <http://edition.cnn.com/WORLD/meast/980722/mideast.peace/index.html>.

176. See generally DAVID LAX & JAMES K. SEBENIUS, *THE MANAGER AS NEGOTIATOR* (1986).

177. *Id.*

178. *Id.*

peace for Israel and the well being of the Palestinian people.¹⁷⁹ These considerations for peace and prosperity refute the characterization of the negotiation as a “fixed pie” since they show there is more to be bargained for than merely control of land.

Shifting from Distributive to Integrative Bargaining

Distributive bargaining tends to motivate competitive and aggressive strategies which harm relationships and is characterized by the idea of a “fixed pie” to be divided between two individuals.¹⁸⁰ Right now, both Israel and the Palestinians remain focused on their positions, a characteristic of distributive bargaining.¹⁸¹ Integrative bargaining focuses on interests instead of positions.¹⁸² By refocusing on interests an integrative bargainer may “go below the line” to find out what is driving the parties’ conflicting positions.¹⁸³ Life in a refugee camp, surrounded by walls, in a land they believe to be their own is unacceptable to the Palestinians.¹⁸⁴ While the land is important to the Palestinians, if they were to settle the land dispute today, they would still be in a state of economic and structural despair — these “below the line issues” need to be addressed.¹⁸⁵

An outside party needs to provide an incentive for the Palestinians to settle. Foreign aid helping to rebuild the Palestinian nation diminishes the distributive nature of the agreement from the Palestinian perspective by giving them more

179. See *supra* note 168 and accompanying text; *infra* note 201 and accompanying text.

180. See RUSSEL KOROBKIN, *NEGOTIATION — THEORY AND STRATEGY* 121, 127-28 (2002). Korobkin discusses the differences between distributive and integrative bargaining, and explains the preference and advantages of integrative bargaining. *Id.* See also Lowry, *supra* note 163, at 3:12-13.

181. See *supra* note 170, at 3:6; see also *Veteran Israeli Sceptical about Peace*, BBC ONLINE, Dec. 1, 2003, available at http://news.bbc.co.uk/2/hi/middle_east/3252656.stm. As Israel speaks of unilateral measures to satisfy their interests, the Palestinians introduce a new sticking point, the “Right of Return,” which would allow tens of thousands of Palestinians refugees to return to their home in Israel. *Id.* See also Lowry, *supra* note 163, at 3:1-6.

182. See KOROBKIN, *supra* note 180, at 134. Korobkin’s chapter on integrative bargaining explains the importance of focusing on ultimate interests rather than superficial positions. *Id.* See also FISHER AND URY, *supra* note 127, at 40; Lowry, *supra* note 163, at 3:9.

183. See Lowry, *supra* note 163, at 3:6.

184. See *supra* note 173; see also *Doubts over W. Bank Barrier Route*, BBC ONLINE, Dec. 9, 2003, available at http://news.bbc.co.uk/2/hi/middle_east/3302637.stm. “‘The wall is a false excuse used as a justification for colonising [sic] our land and establishing settlements,’ said Nasser al-Kidwa, the Palestinian UN observer who proposed the [UN resolution requesting that the International Court of Justice review the legality of the Israeli wall].” *Id.*

185. See *id.*; see *infra* note 200 and accompanying text.

value to claim in an agreement than merely land or recognition.¹⁸⁶ In 2001, Israel received \$5 billion in aid from the U.S. government.¹⁸⁷ The Palestinians recently received a pledge from the *entire worldwide* community in April of 2002 for \$1.2 billion of emergency humanitarian relief to rebuild the West Bank infrastructure;¹⁸⁸ this figure surpasses the normal annual amount of aid granted to Palestinians by the U.S. and world community combined.¹⁸⁹ Were the United States, or a collection of states, to temporarily commit to a Palestinian stimulus package to compete with the U.S.' backing of Israel, the nature of the bargaining process would become more integrative, rather than distributive, because the Palestinians would be presented with an alternative — an alternative that stands a greater chance of being valued as preferable to non-settlement since it addresses a "below the line" interest unsatisfied by proposals based solely on land.¹⁹⁰

To this effect, the Bush administration recently offered an additional \$67 million USD to the Palestinian causes of education, economic developments, water projects, and medical care.¹⁹¹ However, even considering the yearly totals of over \$267 million in U.S. aid to the Palestinians, this number pales in comparison to the annual \$3 billion the U.S. will give to Israel, and especially to the over \$100 billion given to Israel since 1949.¹⁹² Clearly, more needs to be put on the table for the Palestinians to draw an increased willingness to make peace with Israel.

Defining the Interests of the Parties

A determination of the interests of the Israelis seems problematic at first. With the past Zionist movement, current settlement activity, and current construction of a dividing wall reminiscent of that once dividing East and West Germany,¹⁹³ Israel shows interest in occupying the land defined by the bounda-

186. See Lowry, *supra* note 163, at 3:3-6.

187. See Susan Abulhawa, *U.S. Aid to Israel - Tax Dollars Soaked in Blood*, Jan. 2001, available at <http://www.mediamonitors.net/susan3.html>. In addition to the \$5,000,000,000 in aid, Israel obtains the benefits of "gifts" like the Arrow Missile and Levi Fighter, totaling \$1.3 billion. *Id.*

188. See Yousif Madani, *International Community Allocates One Billion Dollars in West Bank Aid*, *PALESTINE ECONOMICS* (2002); see also *supra* note 165.

189. See Arab American Institute Online, *Foreign Aid*, available at http://www.aaiusa.org/foreign_aid.htm.

190. See FISHER AND URY, *supra* note 127, at Ch. 4. Ury discusses the importance of inventing options for mutual gain. *Id.*

191. See United States Embassy Online, *U.S. Offers Additional \$67 Million to Aid Palestinian Refugees*, May 22, 2003, available at http://www.usembassy.it/file2003_05/alia/A3052205.htm.

192. See Washington Report on Middle East Affairs, *The Strategic Functions of the U.S. Aid to Israel* available at <http://www.wrmea.com>. The website highlights a fact that some Americans may not know: Israel gets one-third of all U.S. foreign aid. *Id.*

193. See *supra* note 173 and accompanying text.

ries of ancient Israel.¹⁹⁴ However, with their past offer to cease settlements in exchange for peace,¹⁹⁵ the Israelis have shown that their overriding interest is peace. The exact interests of the Palestinians are not as difficult to determine. Their current demands¹⁹⁶ show their interests not only include possession of land,¹⁹⁷ but also in statehood recognition¹⁹⁸ and prosperity.¹⁹⁹ Currently, many Palestinians are living as refugees in half-demolished cities resulting from the

194. See *Full Text: Sharon's Address*, BBC ONLINE, Dec. 4, 2001, available at http://news.bbc.co.uk/2/hi/world/monitoring/media_reports/1690673.stm. Israeli Prime Minister Sharon addressed the nation as the Israeli army launched attacks in Gaza and the West Bank, in retaliation for Palestinian suicide attacks killing at least 25 Israelis. *Id.* Sharon said, "[The purpose of those behind the attacks] is to bring us to total despair, to the loss of hope, to the loss of the national vision which leads us to be a free nation in our land, *the land of Zion and Jerusalem*." *Id.* (emphasis added)

195. See *Israel Offers Settler Deal*, BBC ONLINE, May 18, 2001, available at http://news.bbc.co.uk/2/hi/middle_east/1336913.stm.

196. See *Texts: Palestinian Truces*, BBC ONLINE, Jun. 29, 2003, available at http://news.bbc.co.uk/2/hi/middle_east/3030480.stm. The article includes the text of Hamas and Islamic Jihad Declaration of Initiative, detailing their demands on Israel, which included:

- 1) The immediate halt of all forms of Zionist aggression against our Palestinian people to include incursions, destruction, closures, siege on the cities, villages and camps; as well as the siege imposed on President Yasser Arafat; the demolition of houses; the bulldozing of agricultural land; encroachment on lands, property, and the Islamic and Christian holy places, particularly the Holy Al-Aqsa Mosque.
- 2) Lifting the siege clamped on the Palestinian people and their elected legitimate leadership headed by brother President Abu-Ammar [Yasser Arafat];
- 3) Releasing the prisoners and detainees held in Israeli jails;
- 4) Stopping encroachment on the Islamic and Christian holy places, particularly the Holy al-Aqsa Mosque, the Church of Holy Sepulchre, the Holy Ibrahimi Mosque and the Church of the Nativity;
- 5) Immediately halting the confiscation of land, the building of settlements on it and the expansion of the existing ones so as to pave the way for dismantling them; as well as stopping the construction of separation walls and fences;
- 6) Starting the occupation forces' withdrawal to the areas where they were before 28 September 2000 and expediting the dispatch of international observers to supervise the implementation of the agreed-upon terms of reference of the peace process in accordance with the resolutions of international legitimacy with the objective of achieving a just, lasting and comprehensive peace in the region.

It is a revolution until victory. *Id.*

197. See *supra* notes 36 and 86 and accompanying text.

198. See Louisa Brooke, *Politics and the Palestinian Issue*, BBC ONLINE, Jan. 23, 2003, available at http://news.bbc.co.uk/2/hi/middle_east/2683613.stm. Brooke discusses the Palestinian statehood issue and gives the positions of the parties on the subject. *Id.*

199. See KOROBKIN, *supra* note 180, at 137-38. Korobkin writes that the most powerful interest are basic human needs, which include security, economic well-being, a sense of belonging, recognition, and control over one's life. *Id.*

recent Israeli military efforts to weed out terrorists from the Palestinian towns.²⁰⁰ Their interest in the land may be seen as of much less value when living conditions are so intolerable.²⁰¹ Undoubtedly, the Palestinians, like all people, have an interest in their own prosperity.²⁰² Therefore both sides have at least one aligned interest: the safety and well being of their people.

In *Getting to Yes*, the authors explain that after determining the interests of the parties, it is necessary to invent options for mutual gain.²⁰³ By assuming there is a fixed pie,²⁰⁴ the bargain remains distributive, which has already been explained as an inefficient approach to settlement.²⁰⁵ Through a process of inventing creative options, the negotiation becomes more integrative in nature.²⁰⁶ By approaching the Israelis and Palestinians prior to a settlement attempt and requesting they consider alternative options, or other compensations not presently contemplated by the parties, the two would have the opportunity to expand their settlement range.²⁰⁷ Local "town-hall" meetings, inviting discourse and suggestions from the people of the land, would achieve this purpose, and also produce the benefit of giving a voice to the people in solving their own dispute. While such an idea may fly in the face of what seems practical between the parties, this is exactly the type of communication that could foster the two parties' mutual understanding and recognition of the interests at hand. On an international level, invitations could be made to worldwide scholars to attend a united conference on the matter; the UN seems an appropriate party to head up such an international effort. In the case of such a lingering conflict, which the parties have been unable to resolve, inviting the world community to offer creative options could prove invaluable to its resolution. In addition, a more organized, worldwide effort on the Internet could serve to invite dialogue and spur ideas on resolving the conflict. These collaborative efforts would further define the interests of the parties and expand the possible settlement range by inventing new

200. See *supra* note 173 and accompanying text; see also *Boy among Dead in Ramallah Raid*, BBC ONLINE, Dec. 1, 2003, available at http://news.bbc.co.uk/2/hi/middle_east/3252048.stm; *U.S. Peace Activist Killed in Gaza*, BBC ONLINE, Mar. 16, 2003, available at http://news.bbc.co.uk/2/hi/middle_east/2855263.stm.

201. See *Palestinian Refugees Pessimistic*, BBC ONLINE, Mar. 26, 2002, available at http://news.bbc.co.uk/2/hi/middle_east/1894108.stm. The article describes Palestinians conditions, "Open sewers, no telephone lines and barely any electricity make for often-dismal living conditions. There is a lot of frustration here and a feeling that the world has forgotten about Palestinian refugees." *Id.*

202. See *supra* notes 192-200 and accompanying text.

203. See FISHER AND URY, *supra* note 127, at 56.

204. See Lowry, *supra* note 163, at 3:3. The term "fixed pie" describes the situation with a fixed amount of resources available for distribution to the parties so that effectively, if one takes more, the other must take less. *Id.*

205. See *id.*; see also KOROBKIN, *supra* note 180 and accompanying text.

206. See Lowry, *supra* note 163, at 3:2; see also KOROBKIN, *supra* note 180, at 130-32 for a discussion on adding or subtracting issues and its effect on integrative bargaining. *Id.*

207. See Lowry, *supra* note 163, at 2:8.

ideas, therefore making the process more integrative and ultimately increasing the odds of settlement.²⁰⁸

Power of Alternatives / Limits to Negotiation

In *The Power of Alternatives or the Limits to Negotiation*,²⁰⁹ David A. Lax and James K. Sebenius explain how in a negotiation the parties' best alternatives without agreement imply the limits to any agreement. The authors explain, "[f]or each side, the best test of any proposed joint agreement is whether it offers a higher subjective worth than that side's best course of action absent agreement."²¹⁰ The risk, they argue, on focusing on the alternatives as the limits of the negotiation, is that the potential is ignored and that each side could help reach an agreement that each would value more than its best alternative.²¹¹ This is based on the premise that the value of negotiation lies in the gains from cooperation.²¹²

The best alternative to non-settlement for Israel includes not only more suicide bombings and domestic unrest, but also more settlement of the disputed territories. The best alternatives for the Palestinians include continued "martyrdom" by suicide bombers inflicting terror in Israel, continued loss of land, and only the hopes of increasing world-wide support for the Palestinian state. Applying the principles in Lax's article, the danger in focusing on these alternatives to settlement is that the potential gains from cooperation are ignored. While the Israelis demand peace for land, the Palestinians demand land for peace, and each side's hands are tightly clenched as they ignore the more important question: How much better the land would be if there were peace and prosperity for all?

Last summer while in Beirut, my friends and I took a tour of the city. We traveled the streets dividing the city's eastern and western halves that served as the boundary line between the Christian and Muslims in the civil war from 1975 to 1983.²¹³ As we drove, one thing became apparent: in trying to win control of the thing they treasured most, the Beirutis had destroyed this treasure, their

208. *Id.*

209. See LAX AND SEBENIUS, *supra* note 176, at 163.

210. *Id.*

211. *Id.*

212. See Lowry, *supra* note 163, at 3:2, 3:12-3.

213. See *Timeline: Lebanon*, BBC ONLINE, available at http://news.bbc.co.uk/2/hi/middle_east/country_profiles/819200.stm.

home, Beirut.²¹⁴ The fallen buildings and still-rubbled streets were proof that the “best alternatives” led to a result in which neither party was rewarded. Like the Israelis and the Palestinians, their inability to focus on the gains from an agreement led to their homeland’s demise.²¹⁵ Beirut, once known as the “Paris of the Middle East,” is just now showing signs of returning to its former glory.²¹⁶ Let us hope that the Israelis and Palestinians are able to see the potential in reaching an agreement; for as they delay, this “Holy Land” is being thrown into the antithesis of what any man or leader could ever define as “glory.”²¹⁷

Lax notes:

[I]f negotiation is seen as a means of doing better by joint action than would be possible otherwise, it should not be surprising that non-negotiation courses of action will sometimes prove to be the superior means A clear-headed focus on the alternatives may help clarify this judgment.²¹⁸

The next section explores how the parties might clarify their current judgment of preferring non-settlement. The process involves one of the most basic, yet difficult, means of addressing the needs of another: listening.

EMPATHIC COMMUNICATION IN A LAND WITH NO EMPATHY

In the *Seven Habits of Highly Effective People*, in a chapter entitled “Principles of Empathic Communication,” Stephen R. Covey explains the importance of first seeking to understand and then to be understood.²¹⁹ Empathic listening allows one to understand the speaker with the goal of grasping the other’s true frame of reference. The analogy of a doctor who prescribes a treatment before performing a proper diagnosis sheds light on the problems of not engaging in empathic listening. Just as every good doctor knows he must make a proper

214. See Marilyn Raschka, *Beirut Digs Out*, available at <http://www.archaeology.org/magazine.php?page=9607/abstracts/beirut>, explaining Lebanese folklore that Beirut has been destroyed and rebuilt seven times within its 5,000-year history. See also <http://www.downtownbeirut.com>.

215. See *Beirut: Physical and Human Geography*, ENCYCLOPÆDIA BRITANNICA, retrieved Dec. 13, 2003, from Encyclopædia Britannica Premium Service, available at <http://www.britannica.com/eb/article?eu=117198>.

216. See Kim Ghattas, *Beirut Given Summit Facelift*, BBC ONLINE, Mar. 25, 2002, available at http://news.bbc.co.uk/2/hi/middle_east/1892971.stm; see also *supra* note 162, regarding Solidere’s rebuilding Beirut.

217. See *Pope Calls for Middle East Peace*, BBC ONLINE, Jan. 1, 2003, available at <http://news.bbc.co.uk/2/hi/europe/2619855.stm>. In his 2003 New Year speech, Pope John Paul II appealed for peace in the Middle East, saying, “How not to look at that holy place where Jesus was born with anxiety and sorrow? Bethlehem, the Holy Land.” *Id.*

218. *Id.*

219. STEPHEN R. COVEY, *THE SEVEN HABITS OF HIGHLY EFFECTIVE PEOPLE* 44 (1997).

diagnosis before treating an ailment, only after understanding your opponent's position in a negotiation can you properly accommodate that party's interests.

Covey describes the basis of the Greek philosophy, which reflect the process of empathic listening — ethos, pathos, and logos:

Ethos is your personal credibility, the faith people have in your integrity and competency. It's the trust that you inspire, your Emotional Bank Account. Pathos is the empathic side — it's the feeling. It means that you are in alignment with the emotional thrust of another person's communication. Logos is the logic, the reasoning part of the presentation.²²⁰

Many falter, ignoring the order of these precepts by trying to argue based on logic without first taking ethos and pathos into consideration.²²¹ Without first establishing credibility and then aligning yourself with emotional stance of your opponent, the reasoning that results may be quite the contrary — unreasonable. In the Middle East, empathic listening is nearly nonexistent between the parties.²²² Instead of attempting to establish credibility or engaging in dialogues to understand each other's positions, the parties focus on external communications in an effort to propagandize world spectators to gain support or justify their actions.²²³

A major step towards resolving the conflict is enabling the parties to engage in empathic communication. The parties must have access to a medium or forum through which they can identify with the other party's grievances. By hearing from the parties first-hand, the credibility of each side would be established. I envision a UN summit where the common people are invited to share their opinions, or, where the UN could moderate "town-hall" meetings where each side could learn how to best accommodate the other party's needs and identify

220. *Id.* at 65.

221. *Id.*

222. See, e.g., *Sharon Rejects Halt on Barrier*, BBC ONLINE, Nov. 30, 2003, available at http://news.bbc.co.uk/2/hi/middle_east/3249414.stm; Paul Reynolds, *Israeli Anger Grows at Arafat*, BBC ONLINE, Sep. 17, 2003, available at http://news.bbc.co.uk/2/hi/middle_east/3103420.stm. The latter article explains the right-wing Jewish sentiment as reflected in the Jerusalem Post. *Id.* The article quotes the newspaper:

"The world will not help us; we must help ourselves. We must kill as many of the Hamas and Islamic Jihad leaders as possible, as quickly possible, while minimizing collateral damage, but not letting that damage stop us. And we must kill Yasser Arafat, because the world leaves us no alternative."

See also *Sheikh Yassin: Spiritual Figurehead*, BBC ONLINE, Oct. 30, 2003, available at http://news.bbc.co.uk/2/hi/middle_east/1695470.stm. Sheikh Ahmed Yassin, spiritual leader of Hamas, who just survived an Israeli-led assassination attempt in September of 2003, said, "The so-called peace path is not peace and it is not a substitute for jihad and resistance." *Id.*

223. See, e.g., *Fatah Denies Militant 'Funding'*, BBC ONLINE, Nov. 8, 2003, available at http://news.bbc.co.uk/2/hi/middle_east/3253529.stm.

with the other's grievances. Only by fostering some form of empathic listening between the parties can the correct diagnosis be made to treat the ailments of the parties.

Checkpoint Israel's Checkpoint Watch

On December 30, 2002, National Public Radio correspondent Linda Gradstein reported on a new group of Israeli women who have launched an organization, Machsom Watch, to observe the Israeli army checkpoints in the occupied West Bank.²²⁴ The group was formed in response to reports of beatings and abuses by Israeli soldiers at checkpoints.²²⁵ Recognizing that the majority of Palestinians have their only interaction with Israelis at checkpoints when Israeli soldiers stop them, the group hopes their presence and ability to report abuses will positively impact the interaction.²²⁶ The women are determined to make a personal contribution to easing relations between Israelis and Palestinians.²²⁷ After recognizing her efforts may interfere with the functioning of the soldiers, one woman said, "I was ashamed of what was being done in my name . . . I felt I needed to do more than just demonstrations . . . I needed to do something to change the situation."²²⁸

One member of the Israeli group, made up of mostly women, said "Palestinians have told her that the soldiers behave more politely when members of her group are present."²²⁹ Explaining the effect on one Palestinian, one member told the reporter about a Palestinian who passed by and shook their hands, and said, "Thank you for being here."²³⁰ The group currently has eighty volunteers who observe checkpoints at least once a week, usually during the most crowded times, and who write and deliver weekly to human rights groups and Israeli Knesset members.²³¹ This example of a positive movement towards understanding, or empathy, is ultimately representative of the type of action that must occur before the resolution of the conflict may occur.

224. See LINDA GRANSTEIN, *Checkpoint Watch*, National Public Radio, Dec. 30, 2002, available at <http://www.npr.org>.

225. *Id.*

226. *Id.*

227. *Id.*

228. *Id.*

229. *Id.*

230. *Id.*

231. *Id.*

THE BENEFITS OF INTEGRATIVE BARGAINING OVER DISTRIBUTIVE BARGAINING

Integrative bargaining is more efficient than distributive bargaining because less time is wasted on gamesmanship.²³² Additionally, one drawback of negotiating over positions in distributive bargaining occurs when parties lock themselves into "frames of reference" they cannot concede without "losing face."²³³ For both the Israelis and Palestinians, losing face would be a sign of weakness, something no Middle Eastern country desires to portray.²³⁴ The Palestinians, in particular, cannot afford to lose face because their very recognition is at stake.²³⁵ Of equal importance to the Israelis is not showing signs of weakness to their threatening Arab neighbors.²³⁶ Having already refused a deal to exchange land for peace and recognition,²³⁷ the Palestinians need to be offered more on the negotiation table in order to justify their acceptance of a proposal. For example, a significant third-party contribution to the Palestinians' economic development, offered in addition the parties' current demands, would guard either side from losing face, which would otherwise result from making additional concessions or accepting a previously rejected proposal.²³⁸

232. See Lowry, *supra* note 163, at 3:12.

233. See *id.* at 3:22. Lowry also notes the risk of losing creditability in making substantial concessions, particularly after making an extreme, or unreasonable offer. *Id.* at 2:11.

234. See Charles Wolfson, *Mideast Plans Proliferate*, CBSNEWS ONLINE, Jul. 20, 2002, available at <http://www.cbsnews.com/stories/2002/07/19/opinion/diplomatic/main515700.shtml>. "In the Middle East peace process, no one wants to make the first move, lest it be taken as a sign of weakness." *Id.*

235. See *supra* note 198.

236. See *supra* note 232; see also *Arab-Israeli Wars*, ENCYCLOPÆDIA BRITANNICA, retrieved Dec. 14, 2003, from Encyclopædia Britannica Premium Service, available at <http://www.britannica.com/eb/-article?eu=8252>.

237. See, e.g., *Palestinian Full Truce Talks Fail*, BBC ONLINE, Dec. 7, 2003, available at http://news.bbc.co.uk/2/hi/middle_east/3297047.stm. Even with a "roadmap" on the table that includes provisions for Palestinian statehood, Palestinian leaders are unable to agree to a cease-fire. *Id.* Their unwillingness to agree to, or incapacity to institute such a cease-fire constitutes a rejection of any proposal on the negotiating table. *Id.*

238. See *Analysis: Paying for Peace*, BBC ONLINE, Jul. 17, 2000, available at http://news.bbc.co.uk/2/hi/middle_east/837478.stm. Some have estimated that the price tag on a plan for peace could run as much as \$40 billion USD. *Id.* See also *supra* note 233; FISHER AND URY, *supra* note 127, at 5.

Separating the People from the Problems

In *Getting to Yes: Negotiating Agreement Without Giving In*,²³⁹ the authors discuss the importance of separating the people from the problem. The fact that real people are involved at the negotiating table cannot be overlooked.²⁴⁰ In the instant matter, two people are involved who have to answer to their nations. When parties become more concerned about their negotiating positions than about the people putting forward those positions, working relationship may be damaged, reducing the prospect for settlement.

Because distributive bargaining tends to be more argumentative, it threatens the parties' relationships.²⁴¹ The likelihood of the parties peacefully coexisting is further threatened by the continued deterioration of their relationship.²⁴² The relationship between Sharon, the Israeli Prime Minister and Arafat, the head of the PLO, is already in a state of disaster — to describe these leaders as enemies, is to put it lightly.²⁴³ It is *possible* that these two men may not reach an agreement due to their personal aversions to one other.²⁴⁴ In such circumstances, the presence of a neutral party, who can communicate the problem and try to reestablish a working relationship between these people becomes crucial.

Pushing the "roadmap" to peace, U.S. Secretary of State Colin Powell completed several Middle East visits while attempting to bring the parties towards an

239. See generally FISHER AND URY, *supra* note 127.

240. *Id.* at 18-19, 29-34.

241. See Lowry, *supra* note 163, at 2:5. Argument is more likely to emerge as the parties are forced to concede in order for the other party to benefit: thus is the nature of the distribution of fixed resources. *Id.*

242. See, e.g., *supra* note 222. The deteriorated nature of the Israelis-Palestinians relations is beyond dispute. *Id.*

243. *Id.*; see also, e.g., Sharon, Arafat not Peacemakers, Oct. 16, 2003, available at http://www.news24.com/News24/World/News/0,,2-10-1462_1431530,00.html (former U.S. Secretary of State Madeleine Albright says, "Arafat and Sharon are two stubborn old men who hate each other."); Analysis: Mideast Peace Hopes, CNN ONLINE, Jan. 1, 2002, available at <http://edition.cnn.com/-2002/WORLD/meast/01/01/mideast.prospects/> (Ari Shavit, an Israeli political analyst, told CNN: "The two men hate each other, detest each other. . .").

244. Heads of state from the U.S. and Israel continually look to individuals other than Arafat to deal with. For instance, President George W. Bush recently rolled out the White House's red carpet to Mahmoud Abbas in July of 2003, before saying, "The Middle East needs leaders of vision and courage and determination to serve the interest of their people . . . Abbas is the first Palestinian Prime Minister, and he is proving to be such a leader." See *Abbas Wins White House Red Carpet*, BBC ONLINE, Jul. 25, 2003, available at <http://news.bbc.co.uk/2/hi/americas/3098265.stm>. Abbas recently resigned and was replaced by Ahmed Qurei, with whom Ariel Sharon plans to hold talks in the near future. See *Israel Calls for Mid-East Talks*, BBC ONLINE, Dec. 13, 2003, available at http://news.bbc.co.uk/2/hi/middle_east/3313325.stm. President Bush has never extended an invitation to Arafat to visit the President's home. See *Sharon Defiant over Israeli 'Wall'*, BBC ONLINE, Jul. 30, 2003, available at http://news.bbc.co.uk/2/hi/-middle_east/3107935.stm.

agreement.²⁴⁵ If Powell, or any other neutral party,²⁴⁶ wishes to bring the parties to an agreement they must employ this principle of separating the people from the problem. This would require directly addressing the problems: Palestinian land being taken by Jewish settlements, the lack of a defined Palestinian state, and terror in Israel.²⁴⁷ After separating the problems from the people negotiating, creative solutions may develop, such as reparations from Israel to the Palestinians for Israeli settled land.²⁴⁸ By using this principle, the negotiation becomes more integrative by allowing a shift in focus to the interests underlying the problems, thereby increasing the likelihood of agreement.²⁴⁹

Achieving a Workable Agreement

In *Negotiation Strategy for Lawyers*, Xavier M. Frascogna, Jr. and H. Lee Hetherington explain that when adhering to the terms of an agreement a negotiation is so one-sided that it proves to be over-burdensome, the burdened party may find breach of the agreement as preferable to the performance under the agreement.²⁵⁰ In such a case, a party who was initially satisfied with a settlement will be deprived of their primary objective — a workable, lasting agreement.²⁵¹ This negotiation principle is appropriate to consider when evaluating the position of the parties.²⁵² Currently the parties have been unable to come to terms on a workable agreement.²⁵³ Whether it be through reinstating the Palestinian borders to the boundaries defined prior to the 1967 war, the creation of a Palestinian state, or the demand that the Palestinians cease the suicide attacks, the parties must realize that in demanding a position that is untenable to the other side, they may be striving towards an agreement that is unworkable.²⁵⁴

245. See, e.g., U.S. Department of State Online, *Middle East Peace Chronology — 2000 - 2002*, available at <http://usinfo.state.gov/regional/nea/summit/chron.htm>; *Israel Calls for Mid-East talks*, BBC ONLINE, Dec. 13, 2003, available at http://news.bbc.co.uk/2/hi/middle_east/3313325.stm.

246. The Arabs may question the neutrality of a U.S. diplomat. See, e.g., *Mid-East Press Sceptical of Rice Visit*, BBC ONLINE, Jun. 25, 2003, available at http://news.bbc.co.uk/1/hi/world-middle_east/3019980.stm. The BBC reports on Arab opinion that U.S. National Security Adviser Condoleezza Rice visited the region in June of 2003 merely to put pressure on the Palestinians. *Id.*

247. See *supra* notes 148, 168, 184, and 197-98 and accompanying text.

248. *Id.*

249. See FISHER AND URY, *supra* note 127, at 17.

250. XAVIER M. FRASCOGNA AND H. LEE HETHERINGTON, *NEGOTIATION STRATEGY FOR LAWYERS* 22-40 (2001).

251. *Id.*

252. *Id.*

253. See *supra* note 237.

254. See generally FRASCOGNA AND HETHERINGTON, *supra* note 250.

More specifically, any deal that does not address the basic human needs of the Palestinians may prove unworkable since they may choose to fight rather than live in continued despair.²⁵⁵ The Palestinians need a plan that offers hope: hope of making a decent living in a decent town and to giving their children a better life than that of a refugee camp.

Is Arafat Willing to Settle?

While the above principles may work in theory, they may prove ineffective if a party is unwilling to negotiate. Some believe that Arafat does not, in fact, want to reach an agreement with Israel.²⁵⁶ The issue of how to deal with a party who does not want to settle is a difficult one. In *Getting Past No: Dealing with Difficult People*,²⁵⁷ William Ury describes a useful tool in dealing with an opponent who thinks he can win without negotiating. Using an example of a hostage situation, Ury explains the processes by which you can encourage another party to negotiate: 1) control your own behavior, 2) create a favorable climate, 3) direct the opponent's attention to the problem of meeting each side's interests, 4) satisfy his unmet interests and make the outcome appear as a victory for him, and 5) educate your opponent regarding the benefits of negotiating and use power to bring him to his senses.²⁵⁸ These empathic principles further an integrative bargaining approach by focusing on the interests and aligning the parties.²⁵⁹

The First Principle, controlling one's own behavior, seems particularly problematic considering the Israeli-Palestinian conflict. With Israeli Prime Minister Sharon's strong-arm tactics and the continued Palestinians insurgency, neither party seems able or willing to control their own behavior.²⁶⁰ Time and time again, the lack of Palestinian control has served as *the* barrier to continuing the peace process.²⁶¹ The job of negotiator is to manage the tension between competitive and cooperative tactics. Undoubtedly, this is precisely what Powell was trying to achieve during his recent visits to the region; however, is it possible that the parties misinterpreted actions of the suicide bomber who blew him-

255. See *supra* note 201.

256. See Benjamin Netanyahu, *Visions for Peace*, Jun. 17, 2002, available at <http://www.netanyahu.org/visforpeace.html>. Netanyahu, former Israeli Prime Minister, writes, "But five Israeli prime ministers have been unable to make peace with Arafat for a simple reason: Arafat does not want peace." *Id.* Netanyahu wrote several books dealing with international terrorism and achieving peace. See, e.g., BENJAMIN NETANYAHU, *A DURABLE PEACE: ISRAEL AND ITS PLACE AMONG THE NATIONS* (2000).

257. CHARLES B. WIGGINS & L. RANDOLPH LOWRY, *NEGOTIATION AND SETTLEMENT ADVOCACY: A BOOK OF READINGS* 105-09 (1997).

258. See FISHER AND URY, *supra* note 127.

259. See *id.* at 40; see also *supra* note 183.

260. See *supra* notes 173 and 237 and accompanying text.

261. See, e.g., *supra* note 173.

self moments before the roadmap's unveiling?²⁶² Israel stated the bombing "showed the new [Palestinian] administration's 'complete failure' to get to grips with the security situation."²⁶³ The incident could be viewed, however, as a competitive tactic by the Palestinians used to show Israel exactly what it has to lose by not making concessions during peace negotiations. This could be reason enough why in the more recent talks during the summer of 2003, Prime Minister Sharon has tolerated additional bombings during the push for the roadmap instead of unequivocally backing out of negotiations.²⁶⁴

Reaching a deal that Arafat can claim as a victory for the Palestinians is of unquestionable importance.²⁶⁵ In addition, it seems that both parties need to be educated by an independent source as to the benefits of peace.²⁶⁶ The world community could also benefit from an education on the living conditions of the Palestinians as well as the state of terror within Israel. In order to achieve this, an international commission should be sent to the Palestinian refugee camps and to Israel. The findings of such could then be used as an educational tool for all parties involved, from which Palestinians and Israelis alike could gauge their gains from settlement. With this vantagepoint in mind, either the UN, or the U.S., could offer an economic recovery proposal for Arafat to consider. This process would educate the parties as to the benefits of a settlement, and may lead to an agreement that each party could hold out as a victory.

FINAL THOUGHTS ON A SETTLEMENT

In conclusion, in order for any agreement between the Palestinians and the Israelis to succeed, the parties must have satisfaction with the process, the substance, and the emotional and psychological ramifications of the agreement. As

262. See *New Mid-East Peace Plan Launched*, BBC ONLINE, Apr. 30, 2003, available at http://news.bbc.co.uk/2/hi/middle_east/2988373.stm.

263. *Id.*

264. See *Bus Bomb Carnage in Jerusalem*, BBC ONLINE, available at http://news.bbc.co.uk/1/hi/world/middle_east/3165279.stm, reporting on a blast killing twenty people and injuring eighty others. The bombing occurred just as Abbas was meeting with Islamic Jihad leaders in the Gaza Strip in a new effort to persuade them to halt attacks. *Id.*

265. See *supra* note 244 and accompanying text; see also Bill Maxwell, *U.S. Policy of Blaming the Victim Leaves Palestinians no Hope*, Aug. 10, 2003, available at http://www.sptimes.com/2003/08/10/Columns/US_policy_of_blaming_.shtml; see also *Middle East and North Africa: Middle Eastern and North African Affairs*, ENCYCLOPÆDIA BRITANNICA, retrieved Dec. 17, 2003, from Encyclopædia Britannica Premium Service, available at <http://www.britannica.com/eb/article?eu=125387>. Prior attempts to settle by Arafat resulted in Arafat's colleagues of accusing him of "selling out to the Israelis." *Id.*

266. See *supra* note 260.

previously discussed, the process can be addressed through a more integrated approach to bargaining. The substance of the agreement may be addressed by the inventing of ideas and the intervention of a third party willing to address the basic human needs of the Palestinian people.²⁶⁷ Finally, by inviting dialogue in “town-hall” meetings, international forums, and independent fact finding commissions, the “below-the-line” interest of the parties can be unveiled and hopefully, resolved in an agreement satisfying both the mental and emotional needs of the Jews and Palestinians. As British Prime Minister Tony Blair aptly stated in his recent speech to the United States Congress, “You cannot teach people hate and then ask them to practice peace. But neither can you teach people peace except by according them dignity and granting them hope.”²⁶⁸ Therefore let us continue to hope, encourage respect and dignity, and, dare I say, “pray for peace.”²⁶⁹

267. See FISHER AND URY, *supra* note 127, at 56-94, for the importance of inventing options for mutual gain.

268. Tony Blair Remarks, July 17, 2003, available at http://www.usembassy.it/file2003_07/alia/a3071702.htm.

269. Quran, The Cow (Al-Baqarah) 002.224, “And make not Allah, by your oaths, a hindrance to your being righteous and observing your duty unto Him and making peace among mankind. Allah is Hearer, Knower.” *Isaiah* 7:45, “I form the light, and create darkness: I make peace, and create evil: I the LORD do all these things.” *Matthew* 5:9, “Blessed are the Peacemakers: for they shall be called the children of God.”